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THE HISTORY OF MARRIAGE

The History of Marriage

JEWISH AND CHRISTIAN

IN RELATION TO DIVORCE AND CERTAIN FORBIDDEN DEGREES

BY

HERBERT MORTIMER LUCKOCK, D.D.

DEAN OF LICHFIELD

Τὸ μυστήριον τοῦτο μέγα ἐστίν.—EPHES. v. 32

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✠

VIRO : ADMODUM : VENERABILI :

THOMÆ : THELLUSSON : CARTER :

CUJUS : VITAM : USQUE : IN : ÆTATEM : PROVECTISSIMAM :

DEUS : EXTENDIT : SUSTINUIT : ET : CONFORTAVIT :

AD : MAGIS : STABILIENDAM : INTER : ANGLOS :

FIDEM : CATHOLICAM : ATQUE : DISCIPLINAM :

HOCCE : OPUS : QUANTULUMCUNQUE :

DEDICAT : SCRIPTOR : OBSERVANTISSIMUS.

✠

Preface.

DIVERS circumstances prompted me to write the following historical survey of the important questions of divorce and certain forbidden degrees in marriage. From time to time I have been called upon to lecture or speak in public upon both of these, and I could not but be surprised to find from the discussions, which have generally taken place, that my brethren of the Clergy have too often seemed to form very decided opinions upon wholly insufficient evidence. Not infrequently they have appeared to be satisfied with the support of some single name of distinction, altogether forgetting that Bishops and Doctors, who rightly command respect for their position and general learning, may some-

times go astray in a particular question, which can only be solved by specific study and knowledge.

About two years ago considerable pressure was put upon me in consequence of the part I took in a discussion which arose out of the action of a well-known London Parish Priest, who had lent his Church for the marriage of a divorced person. But what finally led to my writing this book was a strongly-worded letter from a distinguished layman, whose acquaintance with the whole literature of marriage is perhaps unequalled, but who was himself precluded by cares of the State from publishing the result of his studies. He wrote thus: "What I am afraid of is, lest the English Church should be deluded by the notion of remarriage for the innocent party, which I am convinced would operate fatally on the whole." As I shared this fear very fully, I felt that it was my duty to comply, and do at least what little I could to put the public in possession of the evidence, by which my own opinion

had been formed, on the indissolubility of marriage.

I hope I may be excused for this long personal explanation, which I have given simply to show that I have not voluntarily chosen the subject. Indeed it has at times been a painful task, and all along a most distasteful one. It can never be pleasant to have to put aside attractive work, and give oneself up to a consideration of such subjects as a treatise on the history of marriage, in especial reference to its perversions, necessarily entails; but it may be a duty. I can only hope that what I have written touching the testimony of primitive antiquity, and also on the present experience of the evil results of relaxing the Marriage Laws in different countries, may have some little influence upon public opinion, in making men regret the concessions which the British Legislature made in 1857, and in determining them not to let the principle of relaxation proceed a single step further.

How often does one hear it said that the Primitive Church was divided in its judgment on the nature of the marriage tie, whether it was really of permanent obligation or not! or, again, that no Council for the first four centuries went further than to discourage remarriage for those who had been separated by divorce! A careful investigation of much that has been written has led me to the conclusion that such statements have been made on evidence taken too often only at second-hand. The prime source of much of the erroneous belief of the later centuries is a speech, made in a memorable divorce suit, by Bishop Cosin, whose acquaintance with Patristic literature was certainly not on a par with his Liturgical knowledge. I hesitate to say a word in disparagement of one, to whom the English Church owes so large a debt for the part that he played in restoring much of her lost heritage in public worship; but he did certainly speak on the subject of divorce, with what we should have

designated a culpable negligence, if we had not reason for believing that, at the time, age had weakened his judgment. The reader will find the evidence set forth in its proper place in the following pages.

There is one point upon which I am fully prepared to meet with strong contradiction from Jewish authorities; it is on the question, whether Moses himself so modified the law as to sanction not only divorce, but also remarriage after divorce. I can find nothing in Deuteronomy or Leviticus, in the original language, to justify the common conclusion; and the fact that it is expressly recognised in the Formula of divorce, and stated to be in accordance with the Law of Moses, does not carry with it the required conviction, because precisely similar assertions have been made in kindred matters without a tittle of evidence to support them.

If our view be correct, it forms a useful link in the chain of evidence against all right of remar-

riage after divorce; but if it be proved to be incorrect, the general conclusion in reference to ourselves is not thereby nullified; for a thing might be lawful for the Jew, and yet unlawful for a Christian. It is obvious, however, that it would be a distinct advantage, if we could be sure that those, who advocate less stringency in the later and more perfect dispensation, are taking distinctly lower ground than was claimed by the earlier and less perfect.

In regard to the prohibited degrees, I have long regretted the persistency with which the supporters of our existing law have clung to Leviticus xviii. 18, as though it were the very key to the whole position. What was feared as the not improbable result of such a course has come to pass. The opinions of Hebrew scholars all over the world has been asked for upon this passage, and expressed with such remarkable unanimity, that no alternative is left but acquiescence; and in consequence, the assertion is

boldly made that the Scripture argument has broken down; and that the whole question must henceforth turn upon expediency, in regard to which private opinion is as good as that of the Church or any other public body.

I have endeavoured to show that the one is by no means a consequence of the other; for there are other passages to be reckoned with, and the whole tenor of Scripture must be disregarded before marriage with a deceased wife's sister can be legalised.

Not long ago a pamphlet was issued to show that the Roman Catholic Church did not believe marriage with a deceased wife's sister to be opposed to Scripture, because she had granted dispensations for it; and in the late debate in the House of Lords on Lord Dunraven's Bill, no less an authority than the Lord Chancellor spoke in the same strain thus: "It is said that the principle has been maintained in the Christian Church throughout all ages, and that such a marriage as this has always been regarded as

contrary to Divine law. I have great difficulty in accepting that. I never knew that the Church of Rome granted dispensations to persons to break the Divine law."[1]

It was very unfortunate that no one acquainted with the history of the Roman Church should have risen to remove the error; for all who have studied the subject know that the Tridentine Doctors debated the question at length, and ended by anathematising any, who said that the Church had not the power to dispense from prohibitions laid down in Leviticus.

The speaker went further and asked, "Can you show me any time in the Early Church when this marriage was forbidden, when other marriages were not forbidden, in precisely the same way and on precisely the same footing, which are solemnised in the Church to-day?"

He was speaking, of course, especially of the marriage of first cousins. It is an old objection

[1] Cf. Report in the *Times* for June 16, 1894.

—nearly always repeated when this controversy comes on—but the answer is easily given, when the history is known. The first time the Church issued a prohibition in her Canon Law against the intermarriage of cousins was at the Council of Agde, at the beginning of the sixth century, many years after the other marriage had been forbidden; for even on the supposition that S. Basil spoke falsely, as men have not hesitated to say, when he asserted that the Church "had all along forbidden such a thing" as marriage with a deceased wife's sister, few would deny that it was positively forbidden in the fourth century. Here, then, was a long period when the two kinds of marriage were not regarded by the Church in precisely the same light; and yet, further, when the Church herself forbade the marriage of first cousins, the prohibition for this was not placed "on the same footing" as for the other marriage, for it was never based as that was, upon Scriptural, but simply on Ecclesiastical, authority.

Again, it would not seem to be generally known that marriage with a cousin was first prohibited, not by Ecclesiastical, but by Imperial or Civil, authority; and that a hundred and thirty years elapsed before the Church publicly indorsed the prohibition. It is well that these circumstances should be brought to light, when opposition to certain laws is encouraged, as it so often is, on the ground that they are the mere outcome of Ecclesiastical tyranny.

I regret that the Report of the Lower House of the York Convocation Committee was not issued till I had finished this book. I have, however, been able to add an Appendix, embodying one important section of it.

I have now only to thank friends who have helped me in different ways: the Bishop of Reading, who is chairman of the Canterbury Convocation Committee on Divorce, for supplying me with numerous reports and pamphlets exhibiting the results of the Marriage Laws in

the different States of America; to Canon Carter, for a careful revision of the whole book, and for many valuable suggestions; to Lord Halifax, for giving me the benefit of his opinion generally on the arguments; and, lastly, to Canon Evans, who has added one more to his numerous past services, in correcting the sheets for the press.

I have written in the hope that my brethren of the Clergy, upon whom so much depends for the creation of public opinion, may be able to satisfy themselves, without much expenditure of time and labour, that the future question of marriage is not to be settled by laws of expediency, but that it can only be safely resolved by a study of its history, as it was set forth first in the ancient writings of the Jews, afterwards commented on, and its perversions corrected, by our Lord, and finally interpreted by the action and authority of the Church all through the Christian centuries.

It is a subject which has been constantly presenting new openings for further and wider investigation; but I have adhered to the purpose with which I started, viz., of presenting, in as brief a form as possible, the main fundamental principles upon which the Church has based her legislation, which cannot be ignored without imperilling somewhat at least of that wonderful sanctity which God intended to encircle the holy estate of matrimony.

H. M. L.

The Deanery, Lichfield,
The Feast of S. James, 1894.

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PART I

THE HISTORY OF MARRIAGE JEWISH AND CHRISTIAN, IN RELATION TO DIVORCE

I.

The Institution of Marriage.

It is almost impossible to study the opening pages of God's revealed Word without having the thought suggested that He designed the marriage bond to be indissoluble, save at least through the interposition of death. The first suggestion of it springs from what He said about His purpose in creating man; it was so to create him that he should reflect the image of his Maker: "Let Us make man in Our Image, after Our Likeness."[1] Man would certainly have fallen short of the Divine resemblance, and that in a very important feature, had he been left in solitude, with no companion to hold communion with in his intellectual and spiritual nature; and it would seem that God at once recognised this, for no sooner was man's creation completed than He said: "It is not good that the man should be alone; I will make him an help meet for him."[2]

The original purpose of God in creating man.

Further, inasmuch as there was perfect union in

[1] Gen. i. 26. [2] Gen. ii. 18.

the Godhead, it follows that the same principle would apply to man if he was to be like God. Of necessity, where the finite and the infinite are brought into comparison, the inferiority of the former is at once apparent. Man, for instance, was created to be holy, as God is holy, but the holiness of the one falls many degrees below the holiness of the Other; the very liability of man to choose evil rather than good stamps it with incompleteness. Again, man was created to be like God in His immortality, but perforce his share in this Divine attribute was dependent; the fact that he forfeited it testifies to an inherent imperfection; even so the marriage bond, which was shadowed forth by man's creation in the Divine Image, could only be a faint reflection of the eternal union of the undivided Trinity. As much, however, as was possible in a finite creature seems to have been intended for him by the Creator; any lower conception would go far to efface all human claim to be in this feature after the likeness of God. On *a priori* grounds, therefore, we are disposed to conclude that when God united man and wife together, it was according to the mind of God that nothing but death should sever the union. He Who united them, and He alone, could part them asunder.

The Trinity in Unity the ideal bond.

The imperfection of the human copy.

Now all that we read in the Book of Genesis about the mode of woman's formation out of man, and all the after reference to this first beginning by our Blessed Lord, bears consistently throughout on this idea of an absolute oneness in the union of man and wife. Indeed, it is the belief of not a few of the Rabbis that the mode of Eve's creation suggests that, in the first human being, man and woman were united together, and that they were endowed with a separate existence only when the latter was formed, but so nevertheless as still to remain "one flesh." Eusebius bears witness to this ancient belief when he exposes the plagiarisms of the Greek philosophers, showing that what was spoken of as a Platonic fable, that "anciently male and female were put together in one body," was really founded upon Genesis; "We must first," he says, "learn about man's nature, for that which we had originally was not the same which we now have. Then it was androgynous, in form and name a combination of both, male and female."[1]

The deep significance of the mode in which Eve was created.

The oneness is far more apparent in the original Hebrew than in the Authorised Version; in the latter

[1] δεῖ δὲ πρῶτον ὑμᾶς μαθεῖν τὴν ἀνθρωπίνην φύσιν καὶ τὰ παθήματα αὐτῆς. ἡ γὰρ πάλαι ἡμῶν φύσις οὐχ ἡ αὐτὴ ἦν ἥπερ νῦν, ἀλλὰ ἄλλη . . . ἀνδρόγυνον γὰρ τότε μὲν ἦν καὶ εἶδος καὶ ὄνομα ἐξ ἀμφοτέρων κοινὸν τοῦ τε ἄρρενος καὶ τοῦ θήλεως.—*Evang. Præpar.* lib. xii. § 12.

The inadequacy of the English translation.

we read that God's determination was to make "an help meet for" man, but the expression which He used implies much more; literally it means "one as his front," his reflected image, his exact counterpart.[1] It is employed to describe things which are alike and answer to each other;[2] and in this passage it points to the possession of a common nature and attributes, of responsive affections, of a mind and intellect capable of sharing one's thoughts and aspirations. The idea takes clearer shape when we see the mode under which her formation is described as having been effected: "The Lord God caused a deep sleep to fall upon Adam, and he slept: and He took one of his ribs, and closed up the flesh instead thereof; and the rib, which the Lord God had taken from man, made He a woman, and brought her unto the man."[3]

The original word here translated "rib" is nowhere else used of this part of the body; the

[1] עֵזֶר כְּנֶגְדּוֹ. For Rabbinic explanations, cf. Lud. de Dieu ad hunc locum, and Jarchi, *ad Mal.* i. 7.

[2] *die Gegenstücke* exactly expresses in German what the Rabbis understand by it. The Versions generally fail to reach the fulness of the original, *e.g.* κατ' αὐτὸν, or ὅμοιος αὐτῷ, LXX., "simile sibi," Vulg., though they represent the original more nearly than the A.V.

[3] Gen. ii. 21, 22. וַיִּקַּח אַחַת מִצַּלְעֹתָיו וַיִּסְגֹּר בָּשָׂר תַּחְתֶּנָּה׃

nearest approach to anything of the kind is a figurative use in connection with the building of the Temple, where it is rendered in the English text "planks"[1] or "beams,"[2] and in the margin "ribs." The Revised Version has given as a marginal alternative "side-chambers," which is in accordance with the meaning generally assigned to the word. Thus it is used several times of the Temple;[3] also of the "sides" of the altar,[4] or of the Ark of the Covenant,[5] and the "side" of the heavens,[6] and of a mountain.[7] It is also found in reference to a man.[8] In a difficult passage of Jeremiah[9] an altogether different meaning has been given to the word by the translators: "All my familiars watched for my halting, *saying*, Peradventure he will be enticed"; but it is far more forcible if it be rendered, "All my familiar friends who watch at my side (*i.e.* whose duty it is to protect me) *say*, Peradventure," etc. Illustrations might be multiplied, but the above will suffice to fix the primary significance of the word as "side."

The Holy Ghost appears, then, to have inspired

[1] 1 Kings vi. 15. [2] 1 Kings vii. 3.
[3] Ezek. xvi. 5, 6, 9, 11; Exod. xxvi. 26, 35.
[4] Exod. xxxviii. 7. [5] Exod. xxv. 14. [6] Exod. xxvi. 35.
[7] 2 Sam. xvi. 13. [8] Job xviii. 12.
[9] xx. 10, following the interpretation of Psalms xxxv. 15 and xxxviii. 17.

The deep significance of the figure under which woman's formation is described.

the writer of the account in Genesis to describe the formation of woman by a figure which is full of meaning in its bearing upon the intensely close relationship between man and wife. Seeing that marriage was destined to be the very foundation of human society, it is not surprising that it should have been put before the race in a manner calculated at once to arrest attention to its import. Adam is described as being cast into a deep sleep and cut in twain by the Creator; for it is said that God "took one of his ribs (*Heb.* sides), and closed up the flesh instead thereof; and the rib (*Heb.* side) which the Lord God had taken from man made He (*Heb.* built up into) a woman."[1] It would seem from this that God did not add something to Adam's body to make up for what had been taken away, because it is implied that he would find his compensation in the counterpart of himself now endowed with her own individual life and being. Such an interpretation gives additional force to Adam's exclamation, when the woman was brought unto him: "This is now bone of my bones, and flesh of my flesh."[2]

There is much force, moreover, in the use here of the word translated "now." It was after God had said that it was not good for man to be alone that

[1] Gen. ii. 21, 22. [2] *Id.* 23.

He is represented as making all the beasts of the field pass before him; we are not told it, but it is at least probable that it would be two and two, male and female, each with his companion; but, unlike them, Adam was alone: for him there "was no help meet"; and it was in the recollection of a fruitless search amid all the creatures, whom he had seen, for a being to answer to his needs, that when Eve was presented to him he immediately said, "now" (or as it is in the original, "this time"[1]) "it is bone of my bones, and flesh of my flesh," it is, in other words, my second self;[2] and then, remembering the mode of her formation, he gave still further testimony to their oneness when he added that "she shall be called Woman (*ishah*), because she was taken out of Man (*ish*)," [3] separate only in gender from each other.

Eve made to be Adam's second self.

There is yet another clause which corroborates what has been said: "Therefore shall a man leave

[1] הַפַּעַם, in Heb. this stroke, *or* beat, this time, *diesmal.*

[2] The word translated "bone" is often used to express "self," but generally, it would seem, of things, though the Rabbis interpret it also of persons.

[3] There is the same correspondence between the old Latin *vira*, which appears in *virago*, and *vir*. So Festus writes, "feminas antiqui, quas nunc dicimus, viras appellabant: unde adhuc permanent virgines et viragines." Cf. Æthiop. *beesith* and *beesi*. The Vulg. reads "virago quoniam de viro sumpta est."

his father and his mother, and shall cleave unto his wife; and they shall be one flesh."[1] It would not have been possible to express the nature of the union in stronger terms. There is no other word in Hebrew that could add any force to what is implied by that which is rendered "cleave": it is to be glued to,[2] to be soldered, inseparably joined.[3] And when it is further declared that they "shall be one flesh," it implies, in the light of what has been said, that the first man and woman were more than figuratively one, for they had been knit together and compacted even of the selfsame material substance.

The closeness of the union suggested by the terms in which it was described.

Now it is commonly thought that this strong declaration was merely a prophetic anticipation of what the marriage union was meant to be, uttered by Adam. Even if the words were his, we might fairly have supposed that he would hardly have spoken with such confidence except under Divine direction; but we have the highest authority of all for attributing the oracular declaration to God Himself. They are God's words, not Adam's. Christ Himself assured the Pharisees that He Who

[1] Gen. ii. 24.

[2] דָּבַק, LXX. κολλᾶσθαι, προσκολλᾶσθαι; Syriac, *id.*; Arabic, "adhærere firmiter ceu visco."

[3] Cf. S. Chrysost. Hom. in S. Matt. xix. 3-11.

created male and female at the beginning had also said, "For this cause shall a man leave father and mother, and shall cleave to his wife: and they twain shall be one flesh. Wherefore they are no more twain, but one flesh."[1]

It rests, therefore, on the indisputable evidence of our Blessed Lord that God intended that, whatever relationship was established between the first man and woman by virtue of their mysterious creation, it should be perpetuated in the marriage of their descendants in all after time.

Conclusion as to the perpetuity of the marriage bond.

A careful and critical examination of the original language, therefore, evidently leads to the conclusion that the first marriage bond was indissoluble. That which in its creation was essentially one, and was declared to be "one flesh," could not be parted asunder except by its destruction. The two could no more separate from each other than they could from themselves; and if death alone could have dissolved the primal bond, so it was ordained that every succeeding marriage should be, by the very charter thus granted, fenced and guarded in like manner.

[1] S. Matt. xix. 4-6. Our Lord emphasises the meaning by accepting the rendering of the LXX., *οἱ δύο*. In the Samaritan Pentateuch it is the same: "there shall be from the two of them one flesh."

II.

Mosaic Legislation.

It is a vast leap from the time of Adam to that of Moses, from the opening pages of Genesis to the later books of the Pentateuch, and we are prepared to meet with vast changes. In the former we were confronted with the model of perfection in the marriage state, with the Divine standard, as it was set up by God Himself before sin entered into the world. Here we are brought into contact with it, as it was modified and regulated by human law. When God makes known His will, He puts forward the highest ideal, and this must be always kept in sight as the ultimate aim; but the human legislator fixes the nearest approach to it which is practicable for fallen man according to the exigency of time and circumstances. He has, in short, to keep before him two great facts—first, the original purpose of God, secondly the life of man as it is; and with both of these in mind, to frame his code of laws for the greatest attainable good.

The Divine ideal modified by the exigency of circumstances.

The retrogressive character of Mosaic enactments.

The Mosaic legislation, compared with the laws laid down at the beginning, was distinctly retrogressive; but, if it be read in the light of contemporary history, and measured by the condition into which the Jews had fallen through contact with heathen nations around them, it bespeaks a keen discernment combined with a fixed determination in all things to raise to a higher level the standard of morality. The special inspiration which Moses received from God controlled his judgment, and enabled him to frame his laws in accordance with the greatest good within man's reach at the time. We may illustrate this in three particulars, —slavery, polygamy, and divorce.

The law of slavery.

In consequence of man's sin and wickedness, Slavery had become practically an inevitable necessity. It arose in a large measure out of wars and human conquests; captives had to be reckoned with by their conquerors; save under exceptional circumstances, it generally happened that the only alternative was death or servitude. The latter was obviously the more merciful of the two. Moses was obliged, therefore, to accept slavery as a recognised evil: and he set himself to mitigate its general hardships by restrictive legislation. Cruelty was henceforward controlled by the imposition of

penalties for excessive chastisement; liberty was placed within reach of every slave in the sabbatical year, or at least at the jubilee; and numerous provisions for kindness and compassion, wholly unknown and unpractised among the heathen, were introduced into the law. Moses did the best that was practicable under the conditions of the time.

The law of polygamy.

So with polygamy. No one doubts that this was a violation of God's original institution. Our Lord's account of it, and His expansion of the original statement, have placed it beyond doubt: "He Which made them at the beginning, made them (a) male and (a) female; and said, For this cause shall a man leave father and mother, and shall cleave to his wife: and they twain shall be one flesh."[1] Here, by adopting the reading of the LXX. and the Samaritan Pentateuch, "the two," "the twain," He points to monogamy as the primal law. But the standard was speedily lost; in the fifth generation from Adam we read of Lamech's having two wives, and not a few of the patriarchs followed the example. The desire for a large progeny has always been strong in the Hebrew race, and this was probably the primary motive with them for multiplying wives; but after they had lived in the midst of

[1] S. Matt. xix. 4, 5.

the Egyptians, where polygamy was based on the worst forms of self-indulgence,[1] the evils of the system became so serious that legislative restrictions were obviously requisite. Moses saw that it was degrading man by encouraging sensuality, that women suffered through the excitement of jealous passions, and that the wellbeing of children was often imperilled by envy and rivalries. The evil was too deeply seated to admit of sudden eradication; so Moses, like a wise and judicious lawgiver, was satisfied to alleviate it.

Restrictions laid on the high priest in regard to marriage.

He began by resorting in exceptional cases to the original law. The high priest was especially consecrated to God and God's service; for him no lower standard was admissible than that which God had set up. As one whose life was spent in ministering about holy things, it was incumbent upon him to uphold the strictest rules of purity and self-restraint. Moses ordered that "he shall take a wife in her virginity."[2] This was always interpreted as restricting him to monogamy; thus, the Babylonian Talmud comments on the passage, "It is written here, one wife, in the singular, not

[1] *γαμοῦσι δὲ παρ' Αἰγυπτίοις οἱ μεν ἱερεῖς μίαν, τῶν δὲ ἄλλων ὅσας ἂν ἕκαστος προαιρῆται.* Diodorus Siculus, i. 51.

[2] Lev. xxi. 13.

two."[1] The Talmudists have dwelt on the statement in the Chronicles,[2] "And Jehoiada took for him two wives," and have gone about to show that this could not possibly have been simultaneously. It is obvious to us that their explanation was unnecessary; for it requires little more than a most cursory glance at the context to see that it was not the priest but king Joash for whom the "two wives" were taken. Jehoiada was his guardian, and suggested marriage to him as soon as he was of age, because the cruelty of Athaliah had left him without a successor. Some of his predecessors had given themselves to the most excessive form of polygamy, and the mention of "two wives" may well be interpreted as indicating the influence of religion in imposing restriction. The notice, however, taken of the case by the Talmudists, and their comments, witness to a fact, nowhere contradicted in history, that the Jewish high priest confined himself to one wife, in accordance with the law of Moses.

ons Again, the Legislator seems to have laid down the same law for the king. There is, it is true, a divided opinion, whether Moses intended only to

[1] הבא נמי כתיב אשא אחת ולא שתים : *Yebamoth*, cap. 6, fol. 59 a; Maimon. *Issure Biah*, xvii. 13.

[2] 2 Chron. xxiv. 3.

abridge for the ruler of Israel the common liberty enjoyed by the kings of the East, of taking as many wives as they wished; or whether he intended that he should be restricted to one only. A comparison of the two restrictions rather points to the latter interpretation: "Neither shall he multiply wives to himself, that his heart turn not away; neither shall he greatly multiply to himself silver and gold."[1] In the first clause he is forbidden any increase; in the second, where an excessive increase is in question, it is indicated by the introduction of a significant word, "greatly" multiply. If this be so, it would seem that Moses took the highest ground, and limited the king, as one who was bound by his position to be an example to his subjects, by the rule which God had originally laid down. The Talmudists, however, interpreted it in the former sense; *e.g.* "he shall not multiply to himself more than eighteen wives."[2] The Targum of Jonathan[3] agrees with this, and Maimonides[4] adds that "whether actual wives or concubines, the number might not exceed eighteen." In either case, history

[1] Deut. xvii. 17. וְלֹא יִרְבֶּה לוֹ נָשִׁים . . . וְכֶסֶף וְזָהָב לֹא יַרְבֶּה לוֹ מְאֹד.

[2] *Sanhed.* cap. 2; *Talm. Bab.* fol. 21 a.

[3] Deut. xvii. 17.

[4] *Halach. M'lachim*, cap. 3.

testifies to grievous transgressions; and it would be difficult, we imagine, in the life of any Eastern potentate to find a parallel to what is recorded of Solomon: "He had seven hundred wives, princesses, and three hundred concubines." [1]

The chief bar to polygamy under Moses.

For the common people Moses made no law, beyond imposing one stringent rule which must have acted as a grave deterrent in the multiplication of wives; it provided for an equality of rights; "if he take him another wife, her food, her raiment, and her duty of marriage, shall he not diminish." [2] The Rabbis in later days claimed liberty for a man, in accordance with the law, as they erroneously taught, for it is nowhere admitted, to have as many wives as he chose, but they said, "the Wise men had laid down that no one should marry more than four, however rich he might be." [3] It is worthy of notice that polygamy is still allowed among Jews. It was, it is true, prohibited for those of the West at the Synod of Worms in 1020 A.D., on the resolution of Rabbi Gershom ben Juda, but it still survives in the East.[4]

Moses dealt with divorce as he did with slavery and polygamy. The licence of heathen nations had

[1] 1 Kings xi. 3. [2] Exod. xxi. 10.
[3] Maimon. *Hil. Ishuth*, cap. 14.
[4] Cf. Eben Ha-Ezer, 1.10; Kalisch *on Exod.* p. 370; *on Levit.* p. 374.

so largely corrupted the chosen people that marriages were contracted and dissolved with the most reckless indifference. Husbands felt no moral obligation to retain their wives a moment longer than they pleased; and in the exercise of an arbitrary caprice, if the least offence was given, they dismissed them, even by word of mouth, without any preliminary warning or form of release.

The laxity of marriage by which Moses was confronted.

The Lawgiver completely altered the character of divorce by a series of enactments, putting a stop to precipitate action, and largely restricting the grounds upon which it was permissible.[1]

In the first place, he checked the recklessness with which the obligation was too often broken, by allowing the separation of husband and wife only by a duly prepared and legally attested document. It entailed trouble, difficulty, and delay, for, at a time when the art of writing was little practised, no one could draw it up but the Scribes, and time was required for the purpose, as, with that love of minute detail peculiar to the Hebrew race, numerous specific

[1] The Jewish interpretations of the Mosaic law on marriage and divorce are to be gathered out of five Talmudic treatises: *Kiddushin*, on the rite of betrothal; *Kethuboth*, on the marriage settlements; *Yebamoth*, on the forbidden degrees and the Levirate law; *Gittin*, on divorce; and *Sota*, on a wife suspected of adultery.

regulations[1] were imposed, without an exact compliance with which, it became inoperative.

Numerous checks and hindrances provided by him.

Further, the application for the bill brought the parties before a duly constituted authority, a priest or magistrate, who examined the alleged grounds of quarrel or dissatisfaction, and not infrequently set them aside as frivolous and trivial, and exercised his influence in effecting a reconciliation. In the second place, Moses interposed obstacles by which it was made illegal for a husband, when his anger had subsided, or he was led to repent of the course he had taken, to reclaim his divorced wife. If during the separation she lived with another man, her intercourse with him was pronounced adulterous, and it was a barrier to the restoration of conjugal rights with the husband who had put her away.[2]

But the most important step taken by Moses was an absolute restriction of divorce to cases of "uncleanness": "When a man hath taken a wife and married her, and it come to pass that she find no favour in his eyes, because he hath found some uncleanness in her: then let him write her a bill of

[1] *E.g.* "a bill of divorce was written in twelve lines, neither more nor less. 'Let him that writes a bill of divorce comprise it in twelve lines, according to the value of the number of the letters in the word Get גט.'"—*Gittin*, cap. 1.

[2] Deut. xxiv. 4.

divorcement, and give it in her hand, and send her out of his house."[1] The Hebrew expression translated "uncleanness" is literally, "the nakedness or shame of a thing."[2] Naturally it would seem to refer to the most aggravated form of defilement—viz. adultery; but inasmuch as another mode of punishment was provided for this,[3] it was regarded generally as including all grave cases of immodesty and indecent conduct, and also such physical defilement, in connection with the productive organs, as by the Levitical Law rendered a person "unclean." Adultery was looked upon by Moses as such a violation of the Divine institution that it struck at the very root of the first principle of marriage. Hence it might never be condoned, but was treated as a capital offence, which nothing could extenuate. The husband under Jewish jurisdiction was compelled at first to have the sentence on an adulterous wife carried out; in later times, however, it was enacted that at least he should be delivered from her.[4]

The equivalents by which the phrase "the shame

[1] Deut. xxiv. 1.

[2] עֶרְוַת דָּבָר Once it is used of physical defilement, and the fact of its being so used in the preceding chapter (xxiii. 14) makes it rather difficult to limit the phrase in this passage to moral defilement.

[3] Lev. xx. 10; Deut. xxii. 22.

[4] Mielziner, *Jewish Law of Marriage and Divorce*, pp. 27, 124.

of the thing" is represented in other languages all point to moral or physical defilement. Moses, therefore, it will be seen, imposed a most stringent limitation; it should not suffice, as hitherto, that the wife had ceased to find favour in the eyes of her husband; he must be furnished with a justifying cause, and that based on the most secret relationships of the married union. It must have created a complete revolution in the matter of divorce; and we find from the Talmud that the Jews were driven to extremities in devising a way of escape and return to their former laxity. In violation of the first principles of grammatical construction, they separated two words which are necessarily linked together, "the shame *of* a thing," and rendered the phrase as indicating two unconnected causes—viz. shame *or* a thing, *i.e.* by their interpretation, any thing, matter, or cause. Hence the question put to our Blessed Lord, "Is it lawful for a man to put away his wife *for every cause*?"[1] And so Josephus, who had accepted the principles of the laxer school of the Rabbis, speaks of being separated "for any causes whatever, such as were found in plenty";[2]

[1] S. Matt. xix. 3.

[2] *καθ' ἅς δηποτοῦν αἰτίας, πολλὰς δ' ἂν τοῖς ἀνθρώποις τοιαῦται γίνοιντο.—Archæol.* iv. 8.

and he actually boasts of having divorced a wife, after she had borne him three children, "because he did not like her ways."[1] Philo Judæus also testifies to the liberty of the husband to divorce his wife "for any pretext he thought sufficient."[2]

The later Rabbis did not hesitate to claim the sanction of Moses for such licence as this; but we have the authority of our Lord Himself to prove that such a claim was based on an entire misrepresentation of Mosaic legislation.

One provision relating to a wife's inchastity calls for special notice while we are examining the legislative enactments of Moses. It may possibly be found hereafter to throw light upon some obscurities arising out of our Lord's interpretation of the law upon the subject of divorce. It refers to a case where a woman had been unchaste before her marriage. The course of proceedings under such circumstances is clearly set forth: "If any man take a wife, and go in unto her, and hate her, and give occasions of speech against her, and bring up an evil name upon her, and say, I took this woman, and when I came to her, I found her not a maid," direc-

Nullity of marriage following on the discovery of a bride's inchastity.

[1] τὴν γυναῖκα μὴ ἀρεσκόμενος τοῖς ἤθεσι ἀπεπεμψάμην.—*In vita sua.*

[2] καθ' ἣν ἂν τύχῃ πρόφασιν.—*de special. Legib.*, 6, 7.

tion is given for the matter to be fully investigated, and if the charge prove to be unfounded, "she shall be his wife; he may not put her away all his days. But if this thing be true, then they shall bring out the damsel to the door of her father's house, and the men of her city shall stone her with stones that she die."[1] The Jew had such a strong feeling of jealousy about a bride's chastity, that he would never have consented to marry one who had forfeited it; and there was something so laudable in the idea, that Moses had no hesitation in providing for the immediate dissolution of a marriage formed under such deceptive circumstances. It may have appeared unduly cruel in the eyes of other nations, where the same instinct does not seem to have existed; indeed, the Jews themselves had scruples, for there is no recorded instance of the extreme penalty of the law having been carried out, and it is generally believed that the husband was satisfied to give a writ of divorce, and send her back with some mark of dishonour to her father's house.

The "legal instrument" would, no doubt, always be given, because it was necessary for the husband's protection, to prevent the discharged wife from claiming conjugal maintenance at some future time;

[1] Deut. xxii. 13, 14, 19-21.

but there were cases where even the less extreme course was still further modified. We have an illustration in what is recorded of Joseph, who, on the discovery that his espoused wife was with child, "not willing to make her a public example, was minded to put her away privily."[1] It was not, however, regarded so much in the light of a divorce, as of what we should now call "a decree of nullity." It invalidated the contract, and made it *ab initio* null and void. The husband of course was free, no marriage having really taken place; the form had been gone through, but that assent, which was an essential prerequisite for a valid contract, was wanting. The case would be analogous to some with which the Church is quite familiar at the present day. She reserves to herself the right in certain cases to decree "nullity of marriage," where, for instance, it has been entered into in ignorance of legal disqualifications, such as a violation of the law on prohibited degrees. It is necessary to call attention to this in view of a subsequent question, upon which it is thought by some to have an important bearing.

Analogous cases in the law of the Church.

[1] S. Matt. i. 19.

III.

Does the Mosaic Legislation contain any Sanction for Remarriage after Divorce?

THERE is a very common belief that Moses legalised not only the separation of husband and wife, but secured also to those that were separated the right of contracting a fresh marriage; in other words, that it was not what is understood by a judicial separation, but *divortium a vinculo*. If the Authorised Version represents truly the meaning of the law, the assumption is fully justified; but there are many and grave reasons for questioning its correctness. We give the generally received translation and an amended form in parallel columns, and then explain the grounds upon which the former appears to us to be at least open to serious doubt.

The Mosaic Law silent about any permission to remarry after separation.

AUTHORISED VERSION.	SUGGESTED AMENDMENT.
When a man hath taken a wife, and married her, and it	If (or when) a man taketh a wife and marrieth her, and

come to pass that she find no favour in his eyes, because he hath found some uncleanness in her: then let him write her a bill of divorcement, and give it in her hand, and send her out of his house.

And when she is departed out of his house, she may go and be another man's *wife*.

And *if* the latter husband hate her, and write her a bill of divorcement, and giveth it in her hand, and sendeth her out of his house; or if the latter husband die, which took her to be his wife;

Her former husband, which sent her away, may not take her again to be his wife, after that she is defiled; for that is abomination before the Lord: and thou shalt not cause the land to sin, which the Lord thy God giveth thee *for* an inheritance.—DEUT. xxiv. 1-4.

it come to pass that she find no favour in his eyes, because he has found some shameful thing in her, and (if) he shall write her a bill of divorce, and give it into her hand, and send her out of his house; and (if) she depart out of his house, and go and become another man's, and the latter man hate her, and write her a bill of divorce, and give it into her hand, and send her out of his house, or (if) the second man, who took her to him to wife, die, (then) her former husband, who dismissed her, may not again take her to be his wife after that she is defiled, for that is abomination before the Lord;

If we had come to the passage without any bias or preconceived views, there is little doubt that we should have seen at once that the whole four verses contain only one sentence, the first three forming the protasis, the last the apodosis. The first three set forth the supposed case; the last the law providing for it. This is the interpretation of the Septuagint

The superiority of the older versions over the English.

and Vulgate Versions, and of a large number of commentators. The testimony of the Septuagint Version[1] is very weighty. It was made before there could be any prejudice in the minds of the translators against divorce, arising out of our Lord's teaching, and at a time when the remarriage of divorced persons must have been common. It is very difficult, therefore, to realise that the Jews would deliberately lose an opportunity of stereotyping the legitimacy of their practice by the authority of Scripture, had they felt at liberty to avail themselves of the passage. The authors of the Revised Translation have been content with that of their predecessors of 1611; but it is difficult to understand upon what grounds they have based their acquiescence. No doubt the rendering of the English Version might be justified, if the circumstances of the case seemed to demand it; but it is certainly not the most natural construction. We

[1] ἐὰν δέ τις λάβῃ γυναῖκα καὶ συνοικήσῃ αὐτῇ, καὶ ἔσται ἐὰν μὴ εὕρῃ χάριν ἐναντίον αὐτοῦ ὅτι εὗρεν ἐν αὐτῇ ἄσχημον πρᾶγμα, καὶ γράψει αὐτῇ βιβλιον ἀποστασίου καὶ δώσει εἰς τὰς χεῖρας αὐτῆς, καὶ ἐξαποστελεῖ αὐτὴν ἐκ τῆς οἰκίας αὐτοῦ· καὶ ἀπελθοῦσα γένηται ἀνδρὶ ἑτέρῳ καὶ μισήσῃ αὐτὴν ὁ ἀνὴρ ὁ ἔσχατος, καὶ γράψῃ, κ.τ.λ. —Deut. xxiv. 1-2; or xxiv. 3-4 in LXX. If the subjunctive mood γένηται is "let her become"—or "she may become"—then μισήσῃ must also be translated, "he may hate her." They must be both taken alike. They only make sense, if the previous ἐὰν be carried on, viz., if she become . . . and if he hate.

are, however, precluded from it in this case by one very grave and weighty consideration, which has been strangely ignored by the later translators. We have the authority of one of the prophets, writing under the guidance of the Holy Spirit, for interpreting the passage as we have suggested. Jeremiah appeals to the Law of Moses, and quotes this very passage in the sense that we have taken; and here, with strange inconsistency, it has been rendered both in the Authorised and Revised Versions according to this interpretation. In the Hebrew the words are exactly the same in Deuteronomy and in Jeremiah; the prophet prefixed to them a mark of quotation, and used them as Moses had done. Whatever sense they bore in the one, they must bear in the other. In the latter passage there is no question whether a divorced woman *may* go and marry another man; but it is a plain statement that, *if she had done so*, she may not be taken back again by her former husband.[1] In like man-

The interpretation accepted by one of the prophets.

[1] The LXX. and Vulg. again confirm this rendering; and both of them bring out strongly the pollution which the woman contracts by a second marriage: *ἐὰν ἐξαποστείλῃ ἀνὴρ τὴν γυναῖκα αὐτοῦ, καὶ ἀπέλθῃ ἀπ' αὐτοῦ καὶ γένηται ἀνδρὶ ἑτέρῳ, μὴ ἀνακαμπτοῦσα ἀνακάμψει πρὸς αὐτὸν ἔτι; οὐ μιαινομένη μιανθήσεται ἡ γυνὴ ἐκείνη*; and the Vulg.: Si dimiserit vir uxorem suam, et recedens ab eo, duxerit virum alterum; numquid revertetur ad eum ultra? numquid non polluta et contaminata erit mulier illa?—Jer. iii. 1.

ner, the prophet asks if Israel, after her repeated adulteries, can expect to recover her lost relationship to God. This is the passage: "It is said, If a man put away his wife, and she go from him, and become another man's, shall he return to her again? shall not that land be greatly polluted? but thou hast played the harlot with many lovers; yet, return again unto Me, saith the Lord." The last clause can hardly be thus correctly rendered; literally it is, "and to return to Me! saith the Lord." There is a significant aposiopesis of this kind: "do you think such a thing possible?"

The conclusion, then, to which we are drawn is that, though taken by itself the passage in Deuteronomy might be ambiguous, all ambiguity is removed by its subsequent application where the meaning is clearly defined.

In disputing the legality of remarriage under the Mosaic dispensation, we are far from denying that it was frequently practised. What has come home to us, after a careful examination of the Mosaic code, is that it contains nothing which justifies the conclusion that it gave legal sanction to the remarriage of divorced persons. There is no contemporary evidence available, and the later testimony of the Talmud we shall show to be open to question. Such

was the prevailing laxity, that it may readily be supposed that Moses was compelled by the very exigency of circumstances to wink at the practice; but there is a wide moral gulf between overlooking a hopelessly ineradicable wrong, and stamping it with the seal of legislative sanction; and the gulf widens, if at the same time connivance is combined with positive efforts to restrain and discourage what cannot in prudence and wisdom be prohibited at the time by a positive legal enactment.

Indications of disapproval of remarriage in the language of Moses.

Now, there are many indications that Moses looked far less favourably upon remarriage after divorce than upon divorce itself. We have the authority of our Lord for asserting that he legalised the latter as a concession to the hardness of men's hearts, and it is certain that he actually provided the means of separation; but, if our criticisms of the passage in Deuteronomy xxiv. are sound, the Mosaic Law is wholly silent as to any permission for divorced persons to contract a fresh marriage. Of course, we are not speaking of cases where one or other of the persons separated had died. Separation was an evil to be sorely deprecated as a departure from the primal intention of the Creator, and Moses did what he could to make it as difficult as possible; but, if we may so speak, it was a negative evil: remarriage,

on the other hand, before death had intervened—till, that is, God had severed those whom He had united —involved a positive transgression of the seventh commandment, and as a declared "abomination before the Lord" His lawgiver could never directly and openly legalise it.

It will be well to examine several points which make very distinctly for this interpretation. There is, however, just one passage requiring notice which has been adduced as favouring remarriage after divorce. It is that which contains a prohibition to the High Priest, not to marry a divorced woman.[1] It is assumed that he is here debarred from something which was legally permitted to others; but it is by no means a necessary consequence. The legislator leaves the laity to follow their own conscience in the matter; their perverse will was so strong at the time, that he saw the futility of imposing restrictions which they would be sure to disregard; but his mode of dealing with the priesthood was fettered by no such restraining influence. The High Priest was an example to the people: the least defilement was wholly incompatible with his office, and Moses had no hesitation in fencing it by a positive enactment. Forbidden by laws of expediency from legislating

The reason for a restriction as to the marriage of the High Priest.

[1] Levit. xxi. 14.

for the mass, who would have set at nought his prohibition, he confined himself to the individual whose very office compelled a recognition of his authority.

Discredit attaching to second unions.

Now, let us look first at the *locus classicus* of the subject, quoted above at length; it bears some noticeable signs that, if a divorced wife contracted a second union, the relationship between the contracting parties was not regarded in the same light as it was under the usual conditions of marriage. It is the only passage where such relationship is spoken of; and it can hardly be accidental that the first and the second "husbands" are described in it by different words.[1] The distinction is ignored in the English Versions, where it runs thus: "If the latter husband hate her, and write her a bill of divorcement . . . or if the latter husband die, which took her to be his wife; her former husband, which sent her away, may not take her again."

Different names for the first and the second husbands.

In the original Hebrew, "husband" is expressed here by two different words: the husband from whom she had been separated is *ba'al*; the husband to whom she had allied herself after separation is *ish*. Literally rendered, it would read, "If the latter *man* hate her, and write her a bill . . . or if the

[1] בַּעַל and אִישׁ.

latter *man* die . . . her former *husband* may not take her."

It is, of course, perfectly well known that *ish*, which we have here translated "man," according to its original significance, has also the sense of "husband," and that Moses, under ordinary circumstances, might have applied it to the first husband; but it is extremely difficult to understand why in the compass of this brief passage he should not have used one and the same designation, if in his eyes the two persons stood in the same position to the woman.

The second covenant less binding.

Secondly, Moses seems to admit the weakness of the second "marriage," when he speaks of a woman who had contracted it being put away by the man who had taken her to wife, for "hatred": "if the latter husband (man) hate her, and write her a bill." The only grounds upon which Moses sanctioned the separation of those who were lawfully married was the discovery of "some uncleanness" in the wife.

Thirdly, Moses alludes to the practice of a husband reclaiming a divorced wife; and it is said to have been the immemorial custom of the Jews to be at liberty to do this, provided only, as the Law states, that she had not meanwhile contracted a fresh alli-

ance. There is no trace whatever of any form or ceremony for the renewal of the broken contract: the husband's willingness to reinstate her in her forfeited position was all that was requisite; and when once the reconciliation had been made, she stepped naturally into all the rights and privileges of his legal wife, which she had before enjoyed. Now, the only ground upon which it would have been lawful for her (or for her husband) to contract a second marriage is the absolute dissolution of the marriage bond, or *divortium a vinculo*; but if this had been created by "the writ of divorce," a fresh marriage would have been requisite to reunite them.

No fresh ceremony, if a divorced wife was taken back again.

Lastly, there is a conclusive argument to be drawn from the "defilement" which Moses says a divorced wife contracted by remarriage. In case she was separated either by divorce or death from the man with whom she formed a second alliance, "her former husband may not take her again, after that she is defiled, for that is an abomination before the Lord."[1] "Defiled": it is the very term by which the consequences of adultery are described in the Law,[2] and again and again in other parts of Scripture the word is used for the pollution of actual or

The second union entailed defilement.

[1] Deut. xxiv. 4. [2] Lev. xviii. 20.

spiritual adultery. If the second union were a legitimate marriage, what constituted the defilement? and how could it be a greater "abomination before the Lord" to live with her as a wife than with any ordinary widow?

The above arguments all point to a personal conviction on the part of Moses that the remarriage of a divorced person, unless death had intervened, was an adulterous connection, and as such, not even in a spirit of concession to the hardness of men's hearts could he possibly give it an open and legal sanction.

The above conclusion is not accepted by modern Jews. They appeal to the evidence of the Talmud in support of their belief that Moses granted to a divorced woman full liberty of remarriage. It is stated, they say, in the Jewish formula of divorce, that she was made free by it "to become any man's wife," "to marry whomsoever she wished"; and they add that this was "in accordance with the Law of Moses and Israel."[1]

[1] The Bill of Divorce found in the Talmud, probably fixed by the Babylonian Rabbis in the fourth century after Christ, is as follows: "On the day of the week N., of the month of N., of the year of the world's creation N., according to the computation by which we are accustomed to reckon in the Province of N., I, N., the son of N., and by what name soever I am called, of the city of N., situated on the river N., and containing wells of water, do

Illustration of Jewish disregard of the marriage laws of Moses and the grounds of divorce.

Now, though it is perfectly true that the Talmud contains as a rule many old traditions, it is capable of indisputable proof that the Jewish wise men, by whom that great body of learning and tradition was built up, departed on the whole subject of marriage very far indeed from the laws laid down by their first Legislator; and, notwithstanding the divergence, they insisted to the end that they rested upon his authority. We may illustrate this in two particulars. First, there are the grounds of divorce. Moses had laid it down in so many words that "uncleanness" (whether moral or physical is of no moment here) was the sole justifying cause for executing a deed of separation between husband and wife; but what light does the Talmud throw upon the interpretation of his words? Look at the two great schools of Rabbinism into which the Talmudists of our Lord's time were divided: the followers of Shammai and the followers of Hillel; the former adhering to rigid conservative principles

hereby of my own will, without force, grant a Bill of Divorce to thee, my wife, daughter of N., who hast been my wife from time past, and with this I free, release, and divorce thee, and thou mayest have control and power over thyself, now and for ever, to be married to any one whom you choose, and no man shall hinder thee from this day forward for ever, and thus thou art free for any man. And this shall be to thee a Bill of Divorce, a letter of freedom, and a document of dismissal according to the Law of Moses and Israel."—Talm., *Gittin*, p. 85, b.

of interpretation, the latter always ready to adopt the most liberal rules of exposition. Both appealed to the authority of Moses, though their conclusions were at times wide as the poles asunder. Shammai disallowed divorce save on the ground of whatever might be embraced under the phrase "the nakedness or shame of a thing," limiting it strictly in an ethical sense to some grave moral delinquency. Hillel extended it to any cause which created disfavour in the eyes of the husband and threatened to disturb domestic happiness: if his wife became dumb or sottish or epileptic; if she cooked his food badly by over-salting or over-roasting it; if she had no child for ten years after her marriage; if the husband saw a woman handsomer than his wife and wished for an exchange; or if, finding marriage a failure, they mutually agreed to separate.[1]

Again, the Talmud witnesses to a very grave misinterpretation touching the principle upon which divorce was permitted by Moses. It is written in Malachi that God "hateth putting away,"[2] but even from this the Talmudists did not hesitate to assert that He had granted the right of divorce to

[1] Cf. *Gittin*, cap. 9, fol. 90a; Maimon., *Ishuth*, cap. 10 and 14; Frankel's *Grundlinien des Mosaisch-Talmudischen Eherechts*, p. 44; Mielziner's *Jewish Law of Marriage and Divorce*, § 71, 72, 73.

[2] Ch. ii. 16.

the Jews, His own peculiar people, as a special privilege; and this is the way they argued in support of their pretensions: "The Lord of Israel saith, 'that He hateth putting away,' Mal. ii. 16. Throughout the whole chapter, saith Rabbi Chananiah in the name of Rabbi Phineas, he is called the Lord of *Hosts*; but here, of *Israel*, in order that it might appear that God did not subscribe His Name to divorces generally, but only among the Israelites; as if He should say, 'I have granted the putting away of wives to the Israelites; to the Gentiles I have not granted it.' Rabbi Chaijah Rabbah saith, 'Divorces are not granted to the nations of the world.'" [1]

Jewish perversions of plain language.

Where we find such perverted sentiments as these unreservedly expressed in the Talmud, and read them in the light of the plain teaching of Moses, and our Blessed Lord's rebuke that it was simply the hardness of the nation's heart that wrung the concession from the Lawgiver, we have no hesitation in saying that the appeal of the Rabbis to Moses, in justification of their view of marriage and divorce, can hardly be upheld. The existence, therefore, in the Talmudic formula of a clause

[1] Hieros., in *Kiddushin*, fol. 58. 3; Lightf., *Hor. Hebr.* in S. Matt. v. 31.

implying that the marriage tie was absolutely dissolved, may not override the previous arguments, that separation was not intended by Moses to carry with it a legislative right of remarriage. The establishment of this has an important bearing upon the Christian code, and ought to be regarded as a potent factor in the interpretation of Christ's mind. At least He, Who came to restore what had been lost through sin, could take no lower view of the binding nature of marriage than His servant Moses had taken.

IV.

Marriage in the Time of our Blessed Lord.

THE times in which our Lord lived upon earth were very evil. The whole principles of morality were out of joint, not one whit less so than in the age of Moses; and Christ had not only to deal with men as He then found them, but to provide also for all future contingencies. A mere human lawgiver would have been content to temporise, doing the best that seemed practically feasible under existing circumstances; but it was impossible for One Who was God as well as man to substitute laws of expediency for absolute right. He could be satisfied only with an ideal standard, having to legislate, not for one age and generation, but for all—for nations yet unborn, no less than for such as were then living—not only for life as it was, but for life as it might be at any future time; and He could only fulfil His Divine commission by framing His laws on the eternal principles of perfect truth. It is a funda-

Christ, as the Restorer, could not legislate after the manner of men.

mental article of belief in Christianity that the Son of God became incarnate to restore to the human race what it had lost by Adam's fall and transgression. It was for this reason that He is designated "the second Man," or "the second Adam." When sin entered into the world, the union, the covenant between man and God, was broken; that close intercourse which had existed between them was no longer possible; but "as in Adam all die, so in Christ shall all be made alive."[1] As, through union with Adam's fallen, sinful nature, all have sinned and died, so, by the re-establishment of the union between God and man, effected when God sent His Son to take man's nature into the Godhead, all may once more be restored to life. It is, then, emphatically in the character of the Restorer that Jesus Christ is presented to us in the Gospel history; but, before we see the force of this idea in connection with the subject more immediately concerned, it will be worth while to show how very urgently the need of restoration was presented to Him by the degraded condition into which all the sacred relationships of the married state had then fallen. Among the Jews marriage had come to be regarded almost entirely as a civil contract. The

[1] 1 Cor. xv. 22.

nuptial benedictions,[1] in which the Divine origin of marriage was set forth, and God's blessing solemnly invoked upon the union, sank altogether into a secondary place; and though the Talmud had preserved the obligation for such religious ceremonies,[2] in those days of laxity they set no store by the presence of a rabbi or priest, but suffered the bridegroom himself, or any of the laity present, to repeat the form. It was scarcely to be expected that a contract signed and sealed by no higher witness would be regarded as of more sacred obligation than those which were made in the ordinary business of civil life. We have seen how lightly divorce was thought of in the school of Hillel, and this, it must be remembered, was the popular and dominant party. When Rabbi Akiva, whose influence was hardly surpassed by any of his contemporaries, felt no shame in saying that a man was justified in putting away his wife if he saw another who surpassed her in beauty, we need no further witness to show how deeply marriage had fallen below the standard of the primal institution.

The religious character of Jewish marriage obscured.

[1] Benedictions were of two kinds: *Berchath Kiddushin*, or *Arusin*, was given at the betrothal; *Berchath Nissuin* at the nuptials. A marriage was legally valid without either being given. Maimon., *Ishuth*, x. 6.

[2] Talm., *Kethuboth*, 7; Maimon., *Ishuth*, iii. 24.

But it was not only Jewish immorality with which our Lord was brought in contact. Rome had, at this time, extended its empire far and wide, and Roman influence was making itself felt in Palestine, as elsewhere. The marriage laws at Rome had once been marked by singular purity, and the marriage tie defined as "an union which involved in man and wife an inseparable life."[1] Under the old republic, the national conscience would have been shocked by freedom of divorce; but the contagion of immorality spread so rapidly during the later republic, that the perpetual obligation of marriage was no longer heard of, and men like Cato and Cicero felt no scruple in putting away their wives. No more vivid picture of a country's degradation could be painted than that in which Seneca describes how the highborn ladies of his day calculated the year, not by the consuls, but by their husbands.[2]

Evil influence of the Roman laws of marriage.

Now, how did Christ deal with this frightful laxity? Recognising, as all great moralists have been quick to do—only, of course, with an infinitely inferior appreciation of the truth—that the purity and

[1] Nuptiæ sive matrimonium est viri et mulieris conjunctio individuam vitæ consuetudinem continens (*Instit.* i. ix. 1). Neminem qui sub ditione sit Romani nominis binas uxores habere posse vulgo patet (*Cod.* v. tit. 5. 2).

[2] *De Beneficiis*, iii. 16. Martial, vi. 7.

sanctity of marriage is the foundation of all national virtue, He must have turned His thoughts at once to the need of a reformation. We can hardly hesitate to believe that it was the very urgency of this matter which led Him to choose the occasion of a marriage feast for the first exhibition of His Divine power. We are not told what part He took in the ceremony; it is enough for us to know that He "adorned and beautified it with His presence"; and none can doubt that the benediction which He gave to the bride and the bridegroom at Cana of Galilee must have impressed the guests and spectators with a new and sacred sense of its forgotten dignity. The early Church,[1] a true exponent of its Founder's mind, had no hesitation in interpreting His presence as indicative of His desire to sanctify afresh the union of man and wife, and to bless it in the name of Him "by Whose gracious gift mankind is increased." So it was that, from the very beginning of Christianity, the sacred character of the marriage rite asserted itself, and the presence of the bishop or priest to conduct the service was made indispensable.[2]

A reason for Christ's presence at Cana of Galilee.

[1] S. Cyril in *Joannis Evang.*, cap. ii. 1-11.

[2] Ignatius ordered that the marriage yoke be put on only with the counsel or direction of the bishop (*Ep. ad Polycarp*, n. 5). Tertullian spoke of the happiness of marriage brought about by

Christ's appeal to the original institution of marriage.

When we turn from Christ's acts to His words, we find exactly what we expected; as the Restorer, ordained to give back to the human race what Adam had forfeited, He recalled His hearers at once to the times of man's innocence, and showed that the original law of marriage was of eternal obligation—the one unchanging standard of Christian living. These are His words: "From the beginning of the creation God made them male and female. For this cause shall a man leave his father and mother, and cleave to his wife; and they twain shall be one flesh: so then they are no more twain, but one flesh. What therefore God hath joined together, let not man put asunder." [1] And again, when His questioners reminded Him of the later legislation of Moses, He said, "From the beginning it was not so." [2]

His explanation of the Mosaic departure from the original standard.

Here we see how our Lord placed in the forefront of all His teaching the original conception of marriage in the Divine Mind as the final court of appeal for the settlement of doubt and perplexity. Having made this clear, He then proceeded to explain the

the procurement of the Church, and confirmed by the Oblation (*ad Uxor*, ii. 9). St. Ambrose asserted that marriage must be sanctified by the authority and blessing of the priest (*Ep.* xix.); and the Council of Carthage ordered that the bride and bridegroom be brought to the priest for his benediction.

[1] S. Mark x. 6-9. [2] S. Matt. xix. 8.

part which Moses, the Lawgiver of Israel, had taken. What seems to underlie the few pregnant words which have been preserved to us, when expanded by the light of history, is something of this kind: God designed that man and wife should live together in an inseparable union; but owing to the working of sin in the world and in the hearts of men, and its complete subversion of Divine principles, the ideal was lost. Contact with surrounding nations infected the chosen people so grievously with immoral and profligate habits, that, to save the whole fabric of Jewish society from falling to pieces, a code of laws adapted to the changed conditions of life became necessary. Moses was desired by God to furnish the code; but so far from "commanding" the Jews to take a lower standard than God had originally set up, or granting greater licence as the special privilege of God's people, he merely suffered, by way of concessive legislation, certain relaxations of the primal law. Indeed he not only did not "command" men to put away their wives; he even interposed every possible obstacle in their way of doing it.

These two facts, viz., that our Lord went back at once, when confronted with the question, to God's purpose in the beginning, and that He pointed out

that the motive for a subsequent modification could only have been temporary and provisional, create a very strong presumption that, in any laws which He would lay down, He could not do otherwise than resort to the first legislation.

A careful consideration of all that He said and of the attendant circumstances has left upon the mind a strong conviction that He did precisely what was to be expected, and upheld the perpetuity of the marriage bond.

Now our Lord spoke on the subject upon four different occasions, and three of the Evangelists have preserved some portion of His teaching.

His first recorded utterance forms a portion of the Sermon on the Mount. It was addressed to His disciples in the hearing of the multitude—the former, no doubt, sitting immediately at His feet, while the latter, in ever-widening circles, gathered round to listen within sound of His voice; for at the beginning it is said "when He was set, His disciples came unto Him: and He opened His mouth, and taught them";[1] but at the conclusion we read, "when Jesus had ended these sayings, the people were astonished at His doctrine."[2]

These are His words: "It hath been said, Whoso-

[1] S. Matt. v. 1, 2. [2] S. Matt. vii. 28.

ever shall put away his wife, let him give her a writing of divorcement: but I say unto you, That whosoever shall put away his wife, saving for the cause of fornication, causeth her to commit adultery; and whosoever marrieth her that is put away, committeth adultery." [3]

His first utterance on divorce in the Sermon on the Mount.

His second utterance is recorded with certain variations by the Evangelists S. Matthew and S. Mark. It was called forth by an attempt on the part of a company of Pharisees to test His position in reference to the two leading Rabbinical schools, one of which admitted divorce only upon moral grounds, while the other allowed it for any cause according to the will of the husband.

His second utterance to the Pharisees.

We have placed the two narratives for convenience in parallel columns:

S. MATTHEW.	S. MARK.
The Pharisees also came unto Him, tempting Him, and saying unto Him, Is it lawful for a man to put away his wife for every cause? And He answered and said unto them, Have ye not read, that He which made them at the beginning made them male and female, and said, For this cause shall a man leave	And the Pharisees came to Him, and asked Him, Is it lawful for a man to put away his wife? tempting Him. And He answered and said unto them, What did Moses command you? And they said, Moses suffered to write a bill of divorcement, and to put her away. And Jesus answered and said unto

[1] S. Matt. v. 31, 32.

father and mother, and shall cleave to his wife: and they twain shall be one flesh? Wherefore they are no more twain, but one flesh. What therefore God hath joined together, let not man put asunder. They say unto Him, Why did Moses then command to give a writing of divorcement, and to put her away? He saith unto them, Moses because of the hardness of your hearts suffered you to put away your wives: but from the beginning it was not so. And I say unto you, Whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery: and whoso marrieth her which is put away doth commit adultery.[2]

them, For the hardness of your heart he wrote you this precept. But from the beginning of the creation God made them male and female. For this cause shall a man leave his father and mother, and cleave to his wife; and they twain shall be one flesh: so then they are no more twain but one flesh. What therefore God hath joined together, let not man put asunder.[1]

His third utterance to the Disciples in private.

His third communication is to be found in S. Mark,[3] though a portion, perhaps, has been preserved also by S. Matthew;[4] it was made privately to the

[1] S. Mark x. 2-9.

[2] S. Matt. xix. 3-9. In v. 9 there is another reading, which we have adopted elsewhere and the grounds for which are given below.

[3] S. Mark x. 10-12.

[4] S. Matt. xix. 10-12. This passage is here detached from the discourse which precedes it, because of the almost insuperable difficulty of explaining its language in reference to anything that Jesus had said thereon, so far as we can gather from what is here

disciples, probably at the close of the day, when they reached the place where they had taken up their abode. Its important bearing upon the subject needs to be emphasised. They were perplexed by something which had fallen from Him in His public teaching to the Pharisees, and when they got home they asked Him privately to clear up the difficulty. His answer is gathered into a few brief words, which are conspicuously clear and definite. The circumstances were such that our Lord could hardly omit a clause which, if intended to apply to them or those whom they would be called to teach, was of the very gravest import.

S. MATTHEW.

His disciples say unto Him, If the case of the man be so with his wife, it is not good to marry. But He said unto

S. MARK.

And in the house His disciples asked Him again of the same matter. And He saith unto them, Whosoever

recorded. Nothing had fallen from Him in His conversation with the Pharisees beyond what was taught by the stricter section of the Jews, who accepted the interpretations of Shammai.

It becomes quite intelligible if it belongs to the teaching which Christ had given "in the house" to His disciples. Here He had set before them a standard which was quite new to the Jews, one which went far beyond the strictest morality of the most rigorist of the school of Shammai: it was an absolute prohibition of divorce from any cause; and they were staggered by its strictness. That these verses could not refer to what immediately precedes is clear from the fact that the same disciples had heard exactly the same interpretation of the law in the Sermon on the Mount, and had expressed no surprise.

them, All men cannot receive this saying, save they to whom it is given. For there are some eunuchs, which were made eunuchs of men: and there be eunuchs, which have made themselves eunuchs for the kingdom of Heaven's sake. He that is able to receive it, let him receive it.

shall put away his wife, and marry another, committeth adultery against her. And if a woman shall put away her husband, and be married to another, she committeth adultery.

His fourth utterance, in the way of illustration.

The fourth occasion upon which He expressed His opinion was when, without any immediate provocation, He incidentally illustrated another subject upon which He was discoursing to some self-justifying Pharisees, by the real teaching of the Law upon divorce, which regarded the remarriage of divorced people, whether husband or wife, as adulterous. "It is easier for heaven and earth to pass, than one tittle of the law to fail. Whosoever putteth away his wife, and marrieth another, committeth adultery: and whosoever marrieth her that is put away from her husband committeth adultery." [1]

Now, when we come to examine these passages severally and minutely, a serious difficulty is at once created in one particular. One of the Evangelists seems to represent our Lord as teaching that the marriage bond may be dissolved on one condition,

[1] S. Luke xvi. 17, 18.

viz., "for fornication" or "for the cause of fornication."[1] Two Evangelists give no hint at any exception having been made, but represent Him as teaching in the most explicit manner that marriage was absolutely indissoluble.

An apparent contradiction in the different accounts.

How can this apparent discrepancy be reconciled? The common method of doing it has been to maintain that it was obviously intended that we should "read into" the later Evangelists the exceptional condition noticed by the earlier. But this is to cut rather than to untie the knot, seeing that we have no authority for supposing that such was the Divine intention; and when the theory is subjected to a critical examination, it is found to create even greater difficulties than it pretends to remove.

Bishop Andrewes on Scriptural discrepancies.

In the first instance we are met by what Bishop Andrewes called a "rule of Divinity and reason," that, when there is a diversity of accounts, it is natural to expound the lesser number by the greater, not the reverse—*i.e.* one Evangelist by two, not two by one; and another rule, he adds, is to expound the earlier writers by the later. Both these rules forbid us "reading into" S. Mark and S. Luke the exceptional clause of S. Matthew. Certainly there is no inherent probability that the earlier record should

[1] S. Matt. v. 32; xix. 9.

be more correct than the later, especially when the times of publication were in fairly close proximity to each other. Take an analogous case by way of illustration: the Synoptists appear to speak of the Last Supper as a Passover, while S. John's observations would suggest that it was not. Here the reverse principle has been adopted. The testimony of the latest of the Evangelists, though the majority is against him, is commonly accepted as conclusive on this point; indeed, it has been said that he wrote what he did for the express purpose of correcting the mistake of his predecessors. We do not ourselves think that there is any real contradiction when the facts are carefully examined, just as we hope to show that there is none in reference to divorce; but the history of the controversy points to the difficulty of laying down rules, whether in favour of a majority of interpreters, or of those who are earlier in date.

A considerable interval of time between the publication of the several Gospels.

Secondly, there is the feeling that, though the suggested method of solving the difficulty might well have been accepted, if the three Gospels had been published simultaneously, and under the same cover, it can hardly claim our acceptance when the circumstances of publication were of a wholly different nature. The Gospels were published separately, and

circulated only by slow degrees; in the absence of printing there could have been no rapid multiplication of copies, for manuscripts took long to write, and, when written, were only procurable by the few.

The argument so often used that "we must take the Bible as a whole," may be a valid one from the standpoint of the nineteenth century, or may have been even for many centuries past; but we must not forget that a long time elapsed before the entire body of inspired teaching was gathered into one volume. The very title, "the books," "the sacred writings," by which what is now called the Bible was known to the early Christians, puts aside the notion that they were regarded by them as one complete and undivided whole. This could hardly have been before the close of the second century, and no corporate action of the Church was taken till the Council of Laodicea[1] began to register the Canonical Scriptures in the latter half of the fourth century. There must have been, therefore, a vast number of Christians who had read one Gospel without ever having seen, or, it may be, even heard of, another. That with which they were severally

[1] The exact date is disputed, and doubts also have been thrown upon the genuineness of the 59th Canon, which contains a catalogue of Books of the Old and New Testaments. The Canon of Scripture was not finally settled till the Council of Carthage, 397 A.D.

familiar was to them the sole authoritative exposition of the mind of Christ; and if it happened to be that according to S. Mark or S. Luke, it would have taught them that marriage was absolutely and unconditionally incapable of dissolution while life lasted; and yet they were entirely deceived, if the suggested method of interpretation be the true one.

Again, it puts a great strain upon our belief, to suppose that the Holy Ghost, Who was sent for the express purpose of bringing to the remembrance of the disciples whatsoever Christ had said unto them, and guiding them into all truth,[1] would leave any ambiguity, in their records of His life, as to His actual judgment upon such a crucial moral question as divorce. Touching, as it did, the fundamental principles of human society, it demanded the greatest care and accuracy of expression; and the omission or insertion of the excepting clause might simply alter the whole way of regarding the marriage rite. If we accept the popular interpretation of the phrase "except it be for fornication," as involving our Lord's sanction to divorce for adultery, together with liberty to marry again, then to pass it over in silence might in some cases affect the whole happiness of life. We can conceive of no greater dif-

The great danger of leaving one Gospel to be supplemented from another.

[1] S. John xiv. 26, and xvi. 13.

ference than that which exists between perfect freedom for a husband to dissolve the tie on discovering his wife's infidelity, and a moral conviction that by the law of God he is indissolubly bound to her unto her life's end.

On the supposition that S. Mark and S. Luke taught the whole truth, as well as S. Matthew, they present us with descriptions of marriage, at least in their prominent features, apparently quite irreconcilable. The disparity, both in theory and practice, has been very forcibly expressed by Dr. Döllinger: on the one hand, "marriage can never be rightly dissolved in the Church, for God has sealed it and placed the act of human consent beyond possibility of lawful change;" on the other hand, "marriage, indeed, is a work of God, and must not be capriciously or lightly disturbed by man for this or that cause; still there are frequent cases—those of adultery, namely—where the one party may separate from the other and marry again. When either has sinned against the holiness of this sacred bond, the other may wholly and finally sever it by a new marriage. In the former case, every one would marry with the consciousness that no human caprice could ever change the relationship on which he was entering. In the latter case, the married person would

The vast disparity created by the omission or insertion of the excepting clause.

know from the first, and all along, that however firm his own determination, it lay in the power of the other party to dissolve the tie." [1]

We have dwelt at length upon this part of the subject, because the idea that the statement preserved in S. Matthew must be taken as ruling the whole Scriptural teaching upon the subject has been so widely and so readily accepted, that we deemed it imperatively necessary to point out what a complication of difficulties arises, when it is followed out in its legitimate issues.

Setting aside the common method of accounting for the difference, we look for some other solution. We think it may be found in what has been called "the local colouring" of the Gospels, by which it is meant that in some particular cases the application of our Lord's words was limited; that, while His teaching was for the most part intended to reach to all nations under heaven, yet at times He spoke for Jews, and Jews only. There are certain phenomena of the different narratives which seem to admit of no other explanation. The Evangelists, writing under the guidance of the Holy Spirit, were endowed with powers of discrimination, and drew

The local colouring of the Gospels.

[1] *The First Age of Christianity and the Church*, translated by H. N. Oxenham, vol. ii. p. 268.

from our Lord's life and doctrine what was especially applicable to those for whom they severally wrote. Thus, there is no doubt that S. Matthew wrote especially for Jews, while S. Mark and S. Luke had Gentile readers primarily and mainly in view.

The Jewish character of the first Gospel.

A few illustrations will serve to substantiate this. In S. Matthew's Gospel the whole narrative is cast in a Jewish mould; perhaps the most forcible external witness to this is the widespread belief of the early Church that the evangelist had composed it originally in the Hebrew language. The Law and the Prophets are constantly referred to; the fact that Jesus is the Messiah of Jewish prophecy is strongly and repeatedly enforced; His genealogy is traced back only to Abraham, the father of the faithful; and a knowledge of Jewish places and customs is invariably assumed.

The Gentile character of the second and third.

In the Gospels of S. Mark and S. Luke all this is changed. In both alike there are distinct indications of a Gentile purpose in the minds of the Evangelists. All that is strictly Jewish falls into the background; the Messiah of the Jews gives place to the Redeemer of the human race; His genealogy is carried on to Adam in order to connect Him with all the nations of the earth; the mission

of the Seventy was restricted by no such limitation as S. Matthew recorded in the commission to the Twelve: "Go not into the way of the Gentiles, and into any city of the Samaritans enter ye not: but go rather to the lost sheep of the house of Israel."[1]

These tendencies might be much more largely illustrated, but enough has been set forth for the purpose in hand.

Our Lord's methods of dealing with the Mosaic Law.

Returning now to the records of our Lord's utterances upon divorce, we find, on the two occasions mentioned by S. Matthew, that He speaks of it as lawful for one cause alone, viz., fornication. In both instances it is important to notice that the subject directly before Him is the right interpretation of the Mosaic Law. Now in interpreting this, He seems to have followed two courses, either to show how its enactments were intended to be elevated and spiritualised in the future law of Christianity, or simply, after pointing out how they had been corrupted by later Jews, to recall his hearers to the exact provisions which the Legislator had laid down. In the Sermon on the Mount He adopts both courses. His mode of introducing the illustrations is not uniform. Two or three times, when He quotes the precise terms of the Law, to expand and spiritualise

[1] S. Matt. x. 5, 6.

its teaching, He prefaces the citation by the words, "It has been said to them of old time."[1] Twice, where He has in His mind the later glosses which the Rabbis had put upon the legislation of Moses, He merely says, "It has been said."[2] Of the latter class of references, one is "Thou shalt love thy neighbour, and hate thine enemy." Only the former clause is found in the Law: the latter was simply a Rabbinical gloss. Another is on divorce: "Whosoever shall put away his wife, let him give her a writing of divorcement." It is not written anywhere in the Law of Moses; it was the language of Rabbinical casuistry, adapted to suit the profligate practice of later times. Those who sat in Moses' seat had interpreted the Law, as though the only condition for divorce was an obligation on the part of the husband to furnish his wife with a legal writ of separation. It was a daring perversion of the Scribes and Pharisees, and Christ pointed out that

His exposure of Rabbinical glosses on the original.

[1] S. Matt. v. 21, 27, 33. The text, however, in 27 is doubtful. "*To* the men of old time"—not *by*. The contrast was between the Law as it spoke to the ancient Jews and the Gospel as it spoke to *them*.

[2] *Id.* 31, 43. In 38 He uses the same introduction, but to quote words which had been interpreted in quite a different sense from their original purport. They were given as a standard for legal assessment of damage: the Jews had made them applicable for encouraging personal retaliation. In this sense Christ would not say that they had been spoken "to the men of olden time."

the original provision of the Law admitted of no such licence. There was in that only one ground of separation sanctioned by Moses, viz., "If she find no favour in his eyes, because he hath found some uncleanness in her." To put her away for any other cause was wholly unjustifiable; it was to leave her exposed to temptation, and to run the risk of making her an adulteress; "Whosoever shall put away his wife, saving for the cause of fornication, causeth her to commit adultery."

Common distinction between the Greek and Hebrew equivalents for ante- and post-nuptial sin.

Now it is not certain in what sense Christ used the word "fornication" in this passage. There are two nouns in classical Greek, used to represent the sin of inchastity; before marriage it is usually *πορνεία* (*porneia*), after marriage, *μοιχεία* (*maecheia*). There is the same distinction observed in two corresponding Hebrew words.[1] There is, however, just one departure from this distinction: *porneia* would be applicable also to a married woman, if, in addition to being unfaithful, she became a public harlot; but it would not be used to characterise a common case of simple conjugal infidelity.

A careful analysis, moreover, of all the passages

[1] זָנָה and נָאַף.

where the words are used both in the Septuagint Version and in the New Testament, shows that the above distinction is generally preserved. Further, it is significant that elsewhere our Lord Himself is careful always to designate the sin of adultery by *maecheia* and never by *porneia*; there is therefore a strong *prima facie* reason for supposing that He had the accepted distinction in His mind on the present occasion. If so, we find its explanation in a strictly Jewish custom, spoken of before, in accordance with which the discovery by the husband of ante-nuptial sin in the bride dissolved the marriage.

Christ's general teaching was founded on the ideal conception of the first marriage, which was unquestionably that of an indissoluble bond. As the true Restorer, He could only go back to the fountainhead of all morality; when confronted, therefore, with the degenerate practice of the later Jews, He explained that once united by the marriage tie the union was indissoluble; separation, however, was permissible under one condition, where to all outward appearance the covenant had been made. It was where she who had been betrothed and had gone through the marriage rite, was discovered to have previously forfeited her virginity.

Ante-nuptial sin rendered a Jewish marriage null and void.

In this case, however, it was in Jewish eyes, strictly speaking, not so much a dissolution of marriage as a declaration of its nullity. Consent, the Jew maintained, and rightly so, was of the very essence of the bond; if this were wanting, or if it had been given under circumstances of deception, no real marriage had taken place. To send the betrothed wife back to her home was not to incur the charge of making her an adulteress, because she had no true husband, her union having been *ipso facto* pronounced null and void. The custom was based upon a high and laudable principle, and our Lord would feel no hesitation in referring to it at least with the people by whom it had been maintained and valued; for, though it was an unique provision,[1] it in no way traversed the original design of God in instituting the marriage rite. It is part, then, of the "local colouring" of S. Matthew's Gospel; and he alone of the Evangelists was careful to preserve the record of it, by reason of its strictly Jewish associations. Having no application to other nations, it finds no place in the pages of S. Mark and S. Luke.

[1] The discovery of ante-nuptial inchastity followed by the birth of a child is, however, at the present time made a ground for dissolution of marriage in Austria, Hungary, Würtemberg, Hamburg; or of any illicit intercourse in Sweden.

These Evangelists felt, no doubt, that such a provision would not be understood by people who were quite unfamiliar with the Jewish practice; and to insert it under the circumstances would not only be irrelevant: it might possibly be misleading. In a word, while S. Matthew knew that it would be deeply significant to a Jew, S. Mark and S. Luke recognised its inapplicability to a Gentile: and so the one recorded it, the others passed it by.

On purely linguistic grounds the above interpretation has much to recommend it; and there is certainly nothing whatever in the first passage from S. Matthew's Gospel (v. 31, 32), which in any way militates against it. But there are reasons arising out of our Lord's language in the second passage (xix. 3-9), which suggest that He had in His mind the case of conjugal infidelity or sin after marriage. Nevertheless even on this supposition it does not destroy the principle which we have asserted, that the excepting clause refers only to Jews, or is part of what we have called "the local colouring" of the first Gospel.

These are the circumstances:

Our Lord's answers to certain Pharisees.

The multitudes were following Him as on the previous occasion; and certain Pharisees came up and tried to ensnare Him on the legal aspect of divorce. His obvious course, indeed the only prac-

tical one, was to argue with them out of their own Law; they knew nothing of any other, and certainly would not be disposed at that stage of His ministry to receive anything based upon His sole authority. They put a specific question to Him, which was practically this: "Was Hillel right in saying that divorce was allowable for every cause?" His answer carried them back at once to the primal principle of the institution of marriage, as laid down in the first of the Mosaic writings, which made no provision at all for divorce. They retorted by saying that a later book of Moses contradicted or corrected the earlier, and that he had commanded them to put away their wives under a legal instrument. To this our Lord replied by showing that, so far from being a command, it was merely a concession, wholly inconsistent with the original conception of marriage, but wrung from Moses by the very hardness of their heart, as a preservative from greater evils; and even here it was only allowed for the single cause of uncleanness: "Whosoever shall put away his wife, except it be for fornication, causeth her to commit adultery."

Now supposing that Christ here meant not ante- but post-nuptial sin, the only explanation of His words, which avoids all conflict with the records

given by S. Mark and S. Luke, is the conclusion that He was simply reminding His hearers that Moses did not sanction divorce upon their lax principles, but only for grave uncleanness. He was not, in short, legislating for Christianity, but correcting Judaism; and the reason for the preservation of the one excepting clause in S. Matthew's Gospel, written for Jews, and its omission in the Gospels of S. Mark and S. Luke, who had Gentile readers chiefly in view, is at once apparent.

We adopted a different reading of one verse from that which is found in the Authorised Version, at the conclusion of our Lord's conversation with the Pharisees; viz., "whosoever shall put away his wife, except it be for fornication, causeth her to commit adultery," instead of, "whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery." The adoption was based on the following considerations: the common reading introduces quite a new element into the subject, for our Lord never elsewhere makes any reference to the husband marrying again after putting away his wife. There is no reason for supposing that He would vary His explanation from that which He had given before, as the persons addressed were practically the same; we have too the support

Diversity of reading in an important verse.

of one of the most ancient and trustworthy manuscripts, as well as other authorities of weight;[1] and finally it removes a difficulty which becomes serious in the light of the almost total silence of the earliest ages touching any right of remarriage after divorce. Where there are two doubtful readings before us, without any great preponderance of textual authority on either side, a preference may fairly be given to that which is most consistent with other considerations of weight and importance.

Whether, therefore, we accept the natural solution, and interpret "fornication" as implying in both places ante-nuptial inchastity, or this other solution, that our Lord was only setting forth in the second the Mosaic law, which forbade separation for any cause except "uncleanness," it must be carefully noted that no mention is

[1] The reading adopted is that of the Vatican MS., and in part also of the Codex Ephraem, and is testified to by the Coptic Version, Origen, Augustine, and has the very strong support of such an early authority as S. Clement, who actually explains what is meant,—"compelling her to become an adulteress." In the Revised Version this reading is put in the margin. It is almost inevitable that, if the reading of the Authorised Version had been accepted, the Primitive Fathers would, in commenting on our Lord's teaching, have dwelt upon it; but as we shall show hereafter they are almost unanimous in supposing that He said nothing about remarriage, whatever interpretation they gave to His views on separation.

made of remarriage, save to pronounce any subsequent union with a wife divorced for fornication adulterous.

Now it is necessary to dwell upon this aspect of the matter, for the point to be settled is not so much whether married people may be separated, but whether after separation remarriage is lawful. For our Lord's teaching on the question of remarriage after divorce, as it was manifestly intended to affect Christians, He has left us two unequivocal statements of His judgment—one recorded by S. Mark, the other by S. Luke. On the former of the two occasions He has before Him none but His disciples, and they have come to Him for instruction in the privacy of the house. The circumstances, then, are most favourable for an unreserved expression of His opinion. His hearers may have been incapable of receiving at once all that He has to say, but He has already won their complete confidence, and they have at least "ears to hear." He sees in them the future teachers of the Christian Church, and He reveals in unmistakable clearness the law of the new dispensation, which upheld the absolute indissolubility of the marriage tie, showing that no man can divorce his wife, and no woman her husband, and marry again, without being guilty of adultery:

Christ's unfettered declaration on the true nature of marriage.

"Whosoever shall put away his wife, and marry another, committeth adultery against her; and if a woman shall put away her husband, and be married to another, she committeth adultery."

The latter clause of this makes it certain that He had here set aside all restrictions of Jewish legislation, and was laying down a law for the Church of the future; for, in the matter of divorce, He gives to the woman a perfect equality of right with the husband, whereas the idea of the wife being permitted to take the initiative in obtaining a divorce was so alien to the Jewish mind that the Scribes and Pharisees would have deemed it nothing less than a revolution, and bidden the people to refuse to hear Him.

Exceptional rights claimed by Salome.

There is just one instance recorded under the Herodian dynasty, in the later history of the Jews, but the historian testifies to its illegality, as the following extract shows: "When Salome happened to quarrel with Costobaras, she sent him a bill of divorce, and dissolved her marriage with him, though this was not according to Jewish laws; for with us" says Josephus, "it is lawful for a husband to do so, but a wife, if she departs from her husband, cannot of herself be married to another, unless her former husband put her away. Salome, however,

chose not to follow the law of her country, but the law of her own authority, and so renounced her wedlock."[1]

The explanation of this Jewish distinction is that the wife was regarded as her husband's property. If she did not remain faithful to him, he could have her stoned; if she did not answer his expectations, he could send her back to the home from which he had taken her. But the wife had no corresponding rights whatever; hence a difference was made between the estimate of the infidelity of the one and the other. It was not adultery, in Jewish eyes, if the husband sinned with an unmarried woman, but it was in the wife, whoever the partner of her guilt might be. Our Lord entered His protest against all such distinctions by placing the woman on a level with man in her marriage relations. The elevation of woman is a marked feature in Christian legislation, and this is one of the earliest intimations of the Legislator's purpose. The effect of His clear enunciation of this uncompromising doctrine seems almost to have staggered His immediate disciples. S. Mark says nothing of the effect produced by it, but this is almost certainly the ground of the question, recorded by S. Matthew, "If the

The Jewish inferiority of woman based on being her husband's property.

[1] Josephus, *Antiq.* xv. vii. 10.

case of the man be so with his wife, it is not good to marry." [1]

The effect produced on the disciples by Christ's unfettered legislation.

The standard here set up was so high, the law so severe in its obligations, that, fearing when there should be no possibility of putting a complete end to the union, its trials and temptations might prove unbearable, they suggested that, under the circumstances, the wisest course would be to abjure marriage altogether.

In the answer which Christ gave, there is not the slightest hint that they had exaggerated the force of His teaching, or that they had found the right solution of the difficulty. Celibacy had often been embraced, and under differing circumstances; men had accepted it, sometimes from a natural tendency to single life, at other times from physical necessity, or it might be from a desire to be able to serve God without distractions; but it must be a purely exceptional condition: the majority of men would be true to the law of their being, and not forego the marriage state for which God had designed them.

The second passage, from S. Luke, is even stronger. It was spoken to some Pharisees, whose special vice is said to have been covetousness. We can only explain the force of our Lord's admonitions by a

[1] Cf. *supra*, p. 47.

reference to the Decalogue, in which the lust for other things is for ever linked with a desire for a neighbour's wife; and He was satisfied to rebuke this one phase of covetousness, which seemed, in His eyes, the greatest transgression. Knowing how frequently it had led to divorce and the subsequent marriage of the divorced, He taught them that, under all circumstances, it was nothing less than adultery. The law was absolute, without a single exception: "Whosoever" (it is "every one who" in the Greek) "putteth away his wife, and marrieth another, committeth adultery; and whosoever marrieth her that is put away from her husband committeth adultery."[1]

His express declaration that marriage after divorce is adulterous.

Such, then, are the circumstances under which Christ spoke on the subject of divorce, and we submit that, when carefully considered, His words leave little doubt that in what He intended to apply to the Christian Church, He gave no sanction to any divorce which was supposed to carry with it a right to marry again, before at least death had severed the bond; but maintained for all its members the absolute indissolubility of the marriage tie.

[1] S. Luke xvi. 18.

V.

The Witness of an Apostle.

Now it must not be forgotten that we have some inspired comment on our Lord's doctrine, so that even if we were prepared to accept the theory that the actual narratives given by the different Evangelists, of what He both said and did, in regard to this matter, are intended to be mutually complementary, and are unreliable if isolated and read independently—a theory, however, which might involve most serious consequences—we should still have to reckon with S. Paul's teaching. He received his knowledge of Christ's doctrine, not from S. Matthew, or S. Mark, or S. Luke, but directly from the lips of his Divine Master. "I certify you," he said with emphasis to the Galatians, "that the Gospel which was preached of me is not after man. For I neither received it of man, neither was I taught it, but by the revelation of Jesus Christ."[1]

S. Paul's interpretation of Christ's words.

He spoke no less than three times on the subject

[1] Gal. i. 11, 12.

of marriage or divorce; twice indirectly only or by way of illustration; once in answer to a plain and definite question. It would not, of course, be right to base an argument upon mere illustrative figures, where a general resemblance might suffice for the purpose in hand; but if what he says, in dealing with the matter directly, admits of no manner of doubt, we are fully justified in interpreting the illustrations without any reserve in the strictest accordance with such teaching. If we may do this, we have three separate expressions of the Apostle's belief in the absolute indissolubility of the marriage bond, save by death.

In the first passage he employs the figure of marriage to explain the relationship of Christians to the Law of Moses: "Know ye not, brethren," he writes to the Romans, "for I speak to them that know the law, how that the law hath dominion over a man as long as he liveth? For the woman which hath an husband is bound by the law to her husband so long as he liveth; but if the husband be dead, she is loosed from the law of her husband. So then if, while her husband liveth, she be married to another man, she shall be called an adulteress; but if her husband be dead, she is free from that law, so that she is no adulteress, though she be

The figure of marriage used to illustrate the Mosaic covenant.

married to another man. Wherefore, my brethren, ye also are become dead to the law by the body of Christ, that ye should be married to another, even to Him Who is raised from the dead, that we should bring forth fruit unto God."[1] The Apostle argues that the legal obligation to a covenant is dissolved by death. Marriage is a case in point: the husband or wife dies, the survivor is free. It is the same in man's relationship to the Mosaic Law; only with this difference, it is not the death of the law to him that sets him free, but his death to the law, through the body of Christ dying on the Cross as his Representative. Now, no doubt, the illustration of marriage might have been used, even if the bond were capable of being dissolved by other causes than death, provided, of course, that this was the chief and recognised cause; but there is no question that it gains enormously in force and propriety, if the writer believed and wished to express his belief that nothing but death could dissolve it, as was the case with man's obligation to the law. There is, therefore, at least a strong presumption from this passage that S. Paul did not consider that unfaithfulness broke the marriage tie.

A similar conclusion follows from his line of

[1] Rom. vii. 1-4.

argument concerning marriage in the Epistle to the Ephesians. Whilst inculcating the relative duties of husband and wife, he lays stress on the oneness which that rite creates between them. According to the original conception they that are married are "members one of another"; they are brought into such a close union that it is their bounden duty to forget the ties of nature in the absorbing obligation of their new covenant; and the Apostle seems to imply that there is only one comparison that can give any adequate idea of the character of the union, which is that of Christ with His Church. "Husbands, love your wives, even as Christ also loved the Church and gave Himself for it; that He might sanctify and cleanse it with the washing of water by the word. . . . So ought men to love their wives as their own bodies. He that loveth his wife loveth himself. For no man ever yet hated his own flesh; but nourisheth and cherisheth it, even as the Lord the Church; for we are members of His body, of His flesh, and of His bones. For this cause shall a man leave his father and mother, and shall be joined unto his wife, and they two shall be one flesh. This is a great mystery; but I speak concerning Christ and the Church."[1]

S. Paul's appeal to the Incarnation as revealing the nature of marriage.

[1] Eph. v. 25-32.

S. Paul goes back in imagination to the beginning, and realises how the first marriage resembled the union between God and man, which would have been perpetual and indissoluble had not sin defeated the primal purpose, and interrupted both the one and the other. After the fall of Adam, the Divine covenant with man was broken by spiritual adultery and a shameless following "after other lovers"; and so it remained till the Incarnation, when Christ took again the manhood into God never more to be divided.

By Adam's transgression human marriage also was degraded from its high estate, and its unity destroyed by polygamy and unfaithfulness; but simultaneously with the restoration of the union between man and his Maker, that between husband and wife, according to its first institution, was reinvested with a permanent and indissoluble character. This is the only legitimate conclusion to be drawn from the fact that in dwelling on the oneness of man and wife, the Apostle closes the argument by appealing to its likeness to the greatest of mysteries as revealed in the Incarnation. If anything short of a Divine interposition can break the marriage bond, it bears no such analogy as S. Paul implied to the relationship of Christ and His Church.

In the third passage the Apostle replies to one of several inquiries which had been put to him by the Corinthian converts, all bearing upon marriage relationships. After expressing his private opinion upon celibacy and the practical necessity of marriage, he breaks out with an authoritative prohibition against divorce, and remarriage in cases where divorce has become inevitable. "Unto the married I command, yet not I, but the Lord, let not the wife depart from her husband; but and if she depart, let her remain unmarried, or be reconciled to her husband; and let not the husband put away his wife."[1] In the original language, it is couched in more emphatic and positive terms, viz.: "I charge you, yet not I, but the Lord, that a wife be not separated from her husband"; but, knowing that cases would arise where, in spite of his solemn injunction that they should cleave to one another, separations would take place, he called upon them not to add sin to sin by contracting an adulterous union, but to remain unmarried, or, better still, to seek to be reconciled. Then he closes by repeating his "charge," "that a husband do not put away his wife."

The Apostle's reply to a direct inquiry from the Corinthians.

His appeal to our Lord's authority invests his utterance with the weightiest significance. He does

[1] 1 Cor. vii. 10, 11.

His appeal to the authority of Christ as expressed in S. Mark's Gospel.

not claim to speak only as one who was moved by the Holy Ghost to reveal the truth, but as having on the particular question before him the explicit commands of Christ. It was the common custom in the schools to quote the decisions of famous rabbis as conclusive; S. Paul recalls the answers which our Lord had made to the disciples, as the future teachers of the Church, and puts it before the Corinthians without the slightest indication that there was any exception to the indissolubility of the bond.

The value of this testimony is very considerable. Even if we could be convinced that an historical record of one Evangelist is only correct when supplemented by that of another, it would be going too far to claim that moral conclusions drawn from the history, and held up for the practical guidance of perplexed inquirers, require similar additions before they should be received and acted upon. Curiosity might have prompted the readers of S. Mark's Gospel to compare it, if opportunity offered, with that of S. Matthew; but we can hardly suppose that the Corinthian converts, who were longing for a resolution of their doubts, would stay to weigh the Apostle's injunctions with the exact words of the authority he quoted, even if they had

been within reach at the time. It is not too much, then, to say that, if S. Paul was a faithful exponent of the mind of Christ, the earliest independent interpretation of the Divine teaching on the subject of marriage is, that no divorce or separation could break the bond. It struck the keynote of all primitive exposition, for, as we shall see, there is an almost unbroken consensus of decision, Patristic and Conciliar, in favour of this view throughout the Church of the first centuries.

VI.

The Testimony of the whole Catholic Church in the First Age.

WE pass now from the inspired records of Holy Scripture to the rule and practice of the Primitive Church, as far as it may be gathered from the leading Fathers and synodical decrees of the first four centuries of ecclesiastical history. It will be found on examination that they were, on the whole, favourable to allowing separation for adultery, but that, with rare exceptions, and these only in the latter part of the period and confined to one branch of the Church, they recognised a stringent prohibition of remarriage for either party before death had dissolved the original bond.

The peculiar value of the evidence.

The first stage of this historical evidence will take us down to the union of Church and State, which followed the conversion of the empire in 314 A.D. The weight of it can hardly be exaggerated, for it is the expression of the unbiassed mind of the Church before it was trammelled by civil laws, which, after

her incorporation with the State, could hardly fail to acquire a measure of authority over her, however unwillingly, in conflicting cases, it was either enforced or recognised.

The Roman Church.

The Pastor of Hermas.

Beginning with Rome, we have the evidence furnished by "the Pastor" of Hermas. There is a great variety of opinion touching both its authority and its date. If we were disposed to appeal to it as in itself authoritative, stress would be laid upon the fact that Irenæus quotes it as "Scripture";[1] Clemens Alexandrinus as a "Divine revelation,"[2] and Origen as "inspired by God";[3] and also to the significance of its having been publicly read in the churches during the first three centuries; but it is enough for our purpose to use it simply as an historic witness to the rule of the early Church. For this purpose, all that is requisite is an assurance of the genuineness of the treatise, and the approximate time of its composition. The earliest date is founded on the belief that it was written by Hermas, whom S. Paul saluted in the Epistle to the Romans;[4] the latest assigns it to Hermas, the brother of Pius, Bishop of Rome in the middle of the second century.[5]

[1] *Adv. Hær.* iv. 20. 2.
[2] *Stromata*, i. xxix.
[3] *Comm. in Rom.* lib. x. 31.
[4] xvi. 14.
[5] Bull's *Defensio Fidei*, i. 2. 3-6. Dindorf's *Præf. ad Hermæ Pastorem.*

The conclusion we have formed upon critical grounds makes the writer an undoubtedly authentic person, recognised at the time as a "prophet," who composed the treatise, and sent it to Clement at the close of the first century, or, at the latest, quite at the beginning of the second.

In it Hermas speaks, apparently with no hesitation, in advocacy of a judicial separation in case of adultery, but absolutely forbids the remarriage of either of the separated parties in the lifetime of the other. What he says in his Fourth Book on Commandments is especially valuable, as it is no mere *obiter dictum*, but his deliberate enforcement of the accepted law on the subject upon which he is treating, viz.: "putting away one's wife for adultery." It is set forth in the form of a conversation with "the shepherd, the angel of repentance," in the following words:—

His enforcement of the recognised law of his time.

"I said to him, Sir, permit me to ask you a few questions. Say on, said he, and I said to him, If any one has had a faithful wife in the Lord, and has detected her in adultery, does the man sin if he continue to live with her? And he said to me, As long as he remains ignorant of her sin, the husband commits no transgression in living with her; but if the husband know that his wife has

gone astray, and if the woman has not repented, but persists in her fornication, and yet the husband continues to live with her, he will be guilty of her crime and a partaker of her adultery. And I said to him, What, then, sir, is the husband to do if his wife continue in her vicious practices? And he said, The husband should put her away, and remain by himself; but if he has put his wife away, and married another, he also commits adultery. And I said to him, What if the woman put away has repented, and wish to return to her husband: shall she not be taken back by her husband? And he said to me, Assuredly. . . . In view, therefore, of her repentance, the husband ought not to marry another when his wife has been put away. In this matter, man and woman are to be treated exactly in the same way."[1]

[1] Et dixi illi: permitte me pauca verba tecum loqui. Dic, inquit. Et dixi illi; Domine, si quis habuerit uxorem fidelem in Domino et hanc invenerit in adulterio, nunquid peccat vir, si convivat cum illa? Et dixit mihi: Quamdiu nescit peccatum ejus, sine crimine est vir vivens cum illa. Si autem scierit vir uxorem suam deliquisse, et non egerit pœnitentiam mulier, et permanet in fornicatione sua, et convivit cum illa vir; reus erit peccati ejus, et particeps mœchationis ejus. Et dixi illi: Quid ergo, si permanserit in vitio suo mulier? Et dixit: Dimittat illam vir; et vir per se maneat. Quod si dimiserit mulierem suam et aliam duxerit, et ipse mœchatur. Et dixi illi: Quid si mulier domina pœnitentiam egerit, et voluerit ad virum suum revertere; nonne recipietur a viro suo? Et dixit mihi: Imo. . . . Propter pœnitentiam ergo non

The Syrian Church.

The Apology of Justin Martyr.

About the middle of the second century, between the years 131 and 141 A.D., Justin Martyr wrote an Apology from the Syrian city of Flavia Neapolis in Palestine, addressed to Antoninus Pius, the Emperor, his son, his adopted son, the Sacred Senate, and the whole people of the Romans. While defending the Christians from the charges so freely brought against them, he propounded certain of Christ's laws, and then challenged the Emperor and his colleagues to examine them critically, and after doing so, to decide as loyal guardians of truth and right. One of these was the law of chastity, on which he quoted our Lord's words: "Whosoever looketh on a woman to lust after her, hath committed adultery already in his heart before God"; and, "He that marrieth one put away by another man, committeth adultery"; and he concludes thus: "So then, both they, who under some human law commit bigamy, are sinners in the eye of the Master, and they who look on a woman to lust after her."[1] He speaks of a man

debet, dimissa conjuge sua, vir aliam ducere. Hic actus similis est et in viro et in muliere.—*Pastor*, lib. ii. Mand. iv. Ed. Migne.

ἀπολυσάτω, φησίν, αὐτὴν, καὶ ὁ ἀνὴρ ἐφ' ἑαυτῷ μενέτω. ἐὰν δὲ ἀπολῦσας τὴν γυναῖκα ἑτέραν γαμήσῃ καὶ αὐτὸς μοιχᾶται.—*Ibid.* Lightfoot, *Apost. Ff.*

[1] ὥσπερ καὶ οἱ νόμῳ ἀνθρωπίνῳ διγαμίας ποιούμενοι, ἁμαρτώλοι παρὰ τῷ ἡμετέρῳ διδασκάλῳ εἰσὶ καὶ οἱ προσβλέποντες κ.τ.λ.—

who had divorced his wife and married another as a bigamist, because he knew that by the law of the Church the divorced woman was still his wife, and to take another in wedlock before her death was to have two wives at one and the same time.

The Egyptian Church.

At Alexandria two leaders of the famous Catechetical School, Clement and Origen, have left their testimony on the nature of the marriage bond.

The Miscellanies of Clemens Alexandrinus.

In the third book of his Miscellanies, Clement refutes at length the heresies of Basilides on the subject of continence and marriage, which had grown up out of erroneous interpretations of certain passages of Holy Scripture. Before entering upon the refutation, he prepares the reader by introducing, at the close of the preceding book, a preliminary statement, which leaves no doubt upon the mind as to the belief of the Alexandrine School, over which he presided. It gathers up into one short sentence what, he says, Scripture teaches on the subject of divorce; "it counsels marriage and allows no release from the union, and it regards as adultery the

Apol. i. 15. The Editor from the Monastery of S. Maur gives this note on δισγαμίας: non secundæ nuptiæ hic a Justino vituperantur sed quæ non soluto priore vinculo contrahantur. Illius enim mens ex testimoniis, quæ ab eo referantur, existimanda.—*Ibid.* The quotation of our Lord's words fixes the meaning.

marriage of those separated while the other is alive."[1]

In the same chapter he asserts that not only is the man who puts away his wife, but he also who takes her to wife, guilty of adultery.

Origen's notice of a dispensation from the rule.

The testimony of Origen requires more careful examination than it has usually received. Writing a commentary on S. Matthew, about thirty years after Clement published his Miscellanies, he expounds our Lord's conversation about divorce recorded in the 19th chapter, and, in doing so, complains that dispensation had been granted from the rule of the Church, founded upon it, though he neither states when nor where. From this note it has been hastily assumed that the Church of Alexandria in his time did not maintain the indissolubility of marriage. It is only when the statement is isolated from its context that it can be made to support such a belief. There can be no question what Origen's own mind was; he dwells at length on the significance of our Lord's explanation to the Pharisees, that the relaxation of Moses was only a condescension to human infirmity; a declension from the original design of the Creator in

1 ὅτι δὲ γαμεῖν ἡ Γραφὴ συμβουλεύει . . . μοιχείαν δὲ ἡγεῖται ἐπιγῆμαι ζῶντος θατέρου τῶν κεχωρισμένων.—*Stromat.* ii-xxiii.

instituting the Rite; and in support of this view he quotes Christ's words: "From the beginning it was not so." He then goes on to show that this principle of concession to man's weaknesses is illustrated from time to time in the New Testament, and that it had been recognised also in the government of the Church in regard to the very matter they were considering. "What is more," he said, "I know cases where those who preside over churches have permitted a woman to marry, without the authority of Scripture, while her former husband was living; and it was," he adds, "in contradiction to Scripture that they did so, for it says that 'the woman is bound so long as her husband liveth'; and in the same way, 'she shall be called an adulteress, if, whilst her husband liveth, she be married to another man.' They were not, however, altogether without excuse in granting this concession: for it was probably for just such an infirmity as we are speaking of in men who could not contain, that they tolerated what was evil through fear of something worse, though contrary to what was written in the beginning."[1]

[1] Scio quosdam qui præsunt ecclesiis, extra Scripturam permisisse aliquam nubere, viro priori vivente: et contra Scripturam fecerunt quidem, dicentem, mulier ligata est quanto tempore vivit vir ejus: item, vivente viro adultera vocabitur si facta fuerit alteri

It deserves our especial notice that Origen guards himself from letting it be supposed that such an union, as had been allowed by the above dispensation, was an actual legal marriage; for he thus writes: "as the woman is an adulteress, though she seem to be married to an husband, if her former husband be yet alive: so also the man, who seems to marry a divorced woman, does not so much marry, according to our Lord's judgment, as commit adultery."[1]

A consideration of the whole passage establishes the fact that the rule and practice of the Church in Origen's time was unquestionably based upon the belief that nothing but death dissolved the marriage bond. Nevertheless, he was free to admit that certain individual ecclesiastics had claimed the right to dispense with the law, in one or more cases, when it seemed to them that the principle of Mosaic concessions to human infirmity was justi-

His disapproval of such relaxation as anti-Scriptural.

viro. Non tamen omnino sine causa hoc permiserunt; forsitan enim propter hujusmodi infirmitatem incontinentium hominum, pejorum comparatione quæ mala sunt permiserunt, adversus ea quæ ab initio erant scripta.—Orig. *Tractat.* vii., in Matt. xix. 16-29.

[1] Qua enim ratione adultera est mulier quamvis, legitime nubere videatur viro vivente: eadem ratione et vir quamvis legitime accipere videatur dimissam ab aliquo viro, non accipit legitime secundum sententiam Christi, sed magis mœchatur, quasi alienam accipiens.—*Ibid.*

fiable; and Origen would not take upon himself to condemn them absolutely, in the face of what he had previously allowed in regard to Moses; but he leaves no shadow of doubt that all Scriptural authority and legal ecclesiastical practice was against them.

The African Church.

Tertullian has been claimed as inferentially at least in favour of remarriage after divorce; but his direct and positive teaching more than counteracts anything he may have said involving no certain conclusion.

Tertullian apparently inconsistent.

In arguing with Marcion[1] on the apparent opposition arising from Moses' allowance of divorce and our Lord's prohibition of it, he insists that the Mosaic legislation may not be rightly set over against the Christian, because Christ showed to the Pharisees that it was designedly of a concessive and temporary character. And in the course of his argument he maintains that Christ did not absolutely prohibit divorce, but even defended it, if it were based on "just grounds";[2] and he says that "he that marries a woman who is unlawfully divorced is as much an adulterer as the man who marries one who is not divorced. That marriage is

1 *Adv. Marc.*, lib. IV. cxxxiv.
2 What he calls *justitia divortii.*

permanent which is not rightly dissolved; therefore, to marry whilst the existing marriage is undissolved, is to commit adultery."[1] It certainly would seem, under ordinary circumstances, to be a fair and legitimate inference to conclude that there was in his eyes, when he wrote this, a possibility of marrying after a lawful divorce without incurring the guilt of adultery; but he does not say it in so many words, neither does he say what constituted a legitimate divorce; and we know that he would have incurred a charge of the gravest inconsistency had he intended us to draw the above conclusion.

The other passage, again, addressed to his wife, hardly less frequently quoted on the same side, cannot be claimed with any fairness; "I have traced out for you," he says, "to the best of my ability the course to be followed by a Christian wife, when her husband, by whatever hap, has been taken away. Let us now turn to the next best counsel arising out of regard to human infirmity, the example of certain women warning us, who when by divorce or an husband's death, an occasion of continency is offered, have not only thrown away the opportunity

1 Illicite enim dimissam pro indimissa ducens, adulter est. Manet enim matrimonium, quod non rite diremptum est. Manente matrimonio nubere, adulterium est. *Adv. Marc.* IV. xxxiv.

of so great a good, but even in marrying have chosen to forget the rule that first and chiefly they should marry in the Lord."[1]

Here, it is true, he admits the legitimacy of divorce; but so far from allowing that a subsequent marriage was lawful in the Church, his whole language is condemnatory of those who had ventured upon it; and if he especially notices that they had married heathen husbands, it is not that this constituted their crime, but rather because it was a grievous aggravation of it. They sinned in marrying; they added sin to sin in marrying out of the pale of the Church. But, apart from these incidental notices, we have the unequivocal language of his treatise "on Single Marriage." Attempts have been made to discredit its value by creating a prejudice against the author on the ground that at this time he had become a Montanist, that holding the unlawfulness of all second marriages, it followed of necessity that he should forbid the remarriage of the

Admitting divorce, he condemns remarriage.

His Montanism no bar to the validity of his evidence.

[1] Proxime tibi dilectissima in Domino conserva, quid feminæ sanctæ, matrimonio quacunque sorte adempto, sectandum sit, ut potui, prosecutus sum. Nunc ad secunda consilia convertamur, respectu humanæ infirmitatis, quarundam exemplis admonentibus, quæ divortio vel mariti excessu, oblata continentiæ occasione, non modo abjecerunt opportunitatem tanti boni, sed ne in nubendo quidem rursum disciplinæ meminisse voluerunt, ut in Domino potissimum nuberent. *Ad Uxor.* lib. ii. c. 1.

divorced. If we were to appeal to him as an authoritative exponent of some dogmatic truth, exception might fairly be taken. The Church could not possibly accept the interpretation of a reputed heretic; but the profession of heresy need in no way impair the credibility of such an one's witness to an historic fact. It is in this character, then, as a recorder of history, that we avail ourselves of Tertullian's testimony to the existing law and practice of the time. He argues strongly for the indissolubility of marriage, showing that by divorce he only intended a judicial separation, and then maintains that, if the bond is not so broken by divorce as to admit of remarriage, it is the same where it has been severed by death. "If," he says, "man cannot separate by divorce those whom God has conjoined, it is equally congruous that man may not conjoin by marriage those whom God has separated by death; the joining of the separation will be just as contrary to God's will as the separation of the conjunction would have been."[1] His meaning is not very clearly expressed, but the context explains it; and the fact which stands out is, that there it was

[1] Igitur si quos Deus conjunxit homo non separabit repudio, æque consentaneum est, ut quos Deus separavit morte, homo non conjungat matrimonio, proinde contra Dei voluntatem juncturus separationem, atque si separasset conjunctionem. *De Monogam.* ix.

undoubtedly recognised as illegitimate to marry after divorce. His argument would have completely broken down had it not been generally prohibited. Moreover, he closes the chapter by asserting it in express terms: "So true is it that divorce 'was not from the beginning,' that among the Romans it was not till after the 600th year from the building of the city that this kind of hard-heartedness is set down as having been practised. But they indulge in promiscuous adulteries, even without divorce; to us, although we do divorce, marriage will not be allowed."[1]

The prohibition is made applicable to the woman in equally express terms in the chapter following. Speaking of a widow, whose husband had died in peace, with no dividing cause of hatred or discord, he writes, "that the wife has no longer any power to put him away; not that she would, even if she could put him away, be able to marry again."[2]

His distinct prohibition of remarriage after divorce.

[1] Adeo autem repudium a primordio non fuit, ut apud Romanos post annum sexcentesimum urbis conditæ id genus duritiæ commissum denotetur. Sed illi etiam non repudiantes adulteria commiscent, nobis etsi repudiemus, ne nubere quidem licebit. *De Monogam.* ix.

[2] Ergo perseveret in ea (*i.e.* pace) cum illo necesse est, quem jam repudiare non poterit, ne sic quidem nuptura si repudiare potuisset. *Id.* x.

It is certain, therefore, that in those passages where Tertullian speaks expressly on the liberty of marrying after a divorce, his language is as definite as possible in disproving its allowance in the African Church.

S. Cyprian.

Half a century later, S. Cyprian, Bishop of Carthage, gave to his son, Quirinus, a succinct course of Divine precepts, and amongst them decided testimony on the indissolubility of marriage.[1] He stated expressly "that a wife must not depart from her husband; or if she should depart, she must remain unmarried," and he quoted in proof of this doctrine from the First Epistle of S. Paul to the Corinthians: "But to them that are married I command, yet not I but the Lord, that the wife be not separated from her husband; but if she should be separated, that she remain unmarried or be reconciled to her husband, and that the husband should not put away his wife."[2]

The Greek Church.

The Apostolical Canons[3] supply distinct information touching the existing law when they were compiled. The date, however, of the compilation

[1] *Testim. contra Judæos*, lib. iii. 90.

[2] 1 Cor. vii. 10, 11.

[3] A portion of these eighty-five Canons was accepted as authentic by the Council in Trullo which is regarded as œcumenical by the Greek Church. Hefele, 451.

is wrapt in uncertainty. It was for a long time generally believed[1] that they must be placed in the third century, and the arguments for this date are exceedingly strong; but certain German writers, among whom Von Drey and Bickell[2] are most prominent, have assigned them to a period subsequent to the Council of Antioch, which was held in 341 A.D., on the ground mainly that the materials for the Canons were apparently borrowed from the decrees of the Council. It has been argued, on the other hand, with equal force, that they were the source from which the Antiochene doctors drew up their Canons, and to this view Hefele inclines. It is hardly worth while to investigate the evidence, for it is universally agreed that the Canons belong to the Eastern rather than the Western Church; if, therefore, one of them distinctly prohibiting the remarriage of divorced persons, was accepted in the fifth century, when it is notorious that the Eastern Church was growing lax in its discipline, it is a fair assumption that it obtained also in the third. We are justified, then,

The Apostolical Canons.

Their dates comparatively speaking unimportant.

[1] Beveridge considered them as a collection of Canons made by Synods in the second and third centuries.

[2] Cf. Von Drey, *Neue Untersuch. über die Konstit. und Kanonen der Apost.* and Bickell, *Geschichte des Kirchenrechts*, vol. i.

in availing ourselves of this authority as evidence of the rule of the East before the Council of Nicæa.

It is worthy of notice that the advocates of the later date are constrained to allow that this particular Canon was one of the oldest in the collection.[1] It is as follows: "If a layman should put away his own wife and take another, or one divorced by another man, let him be excommunicated."[2]

The Church of Spain.

In 313 A.D. a council was held at Iliberis in Andalusia, now known as that of Elvira. It may be regarded as a representative Synod of the whole

[1] Hefele, p. 478.

[2] *εἴ τις λαϊκὸς τὴν ἑαυτοῦ γυναῖκα ἐκβάλλων, ἑτέραν λάβῃ ἢ παρ' ἄλλου ἀπολελυμένην ἀφοριζέσθω.*—Can. xlviii. Mr. J. W. Lea, in his pamphlet, p. 7, has called attention to the interpretation put upon this Canon in Smith's *Dictionary of Antiquities*, where it is said to refer only to illegal divorces, and he very properly exposes the principle of thus wresting a Canon, which is "itself unqualified and without exception," to suit preconceived views. Balsamon is appealed to as the authority for the above interpretation: but he stands alone; not one of the great Canonists support him; and it is difficult to believe that, living as he did, nearly nine centuries after the Council, he was better able to understand its Acts than any one else. He was an Eastern bishop, and wished to support the laxer views of his branch of the Church by a Western Council. We have dwelt upon it because it affords yet one more illustration of the reckless way in which we complain that the early evidence on this subject has been perverted.

husband a writ of divorce in consequence of his depraved lust, for such a cause as she can make out—*e.g.* for drunkenness, or gambling, or consorting with women; nor may husbands put away their wives for whatever reason they please. But, in sending a writ of divorce, the wife may investigate these charges only, whether she can prove her husband guilty of murder or sorcery, or the robbing of graves, so that, if she make good her case, she should receive back the whole of her dowry. For, if she has sent a writ on any other than these three counts, she is bound to deposit all her property, even to a pin's head, in her husband's house, and, for her over-boldness, to be banished to an island.

"In the case of men, also, if they send a writ, it will be proper for these three charges to be investigated, whether he wished to put her away for adultery or sorcery, or as a procuress. For, if he put away a wife who is free from these charges, he must restore the whole of her dowry, and he may not marry another." [1]

[1] Placet mulieri non licere propter suas pravas cupiditates marito repudium mittere exquisita causa, velut ebrioso, aut aleatoris, aut mulierculario: nec vero maritis per quascunque occasiones uxores suas dimittere. Sed in repudio mittendo a fœmina hæc sola crimina inquiri, si Homicidam, vel Medicamentarium vel Sepulchrorum Dissolutorem maritum suum esse probaverit, ut ita

This edict bases a right of divorce upon five distinct grounds, viz.: murder, sorcery, breaking up of graves, promoting unchastity, and adultery; and it certainly implies a right of marrying again to the divorcing husband. If, as has been too confidently stated, this law received the sanction of the Church,[1] it is perfectly obvious that its enactments would have been noticed by some of the great writers of the time. But what are the facts of the case? There is not a single Father who ever alludes to any legal sanction for divorce upon the first four of the grounds allowed by Constantine, and not more than one or two admit it for the fifth, and in this case the evidence is by no means free from ambiguity.

There has been much misunderstanding of the evidence to be derived from the period on which we are now entering; and it arose in a quarter where

demum laudatur omnem suam dotem recipiat. Nam si præter hæc tria crimina repudium marito miserit, oportet eam usque ad aculeum capitis in domo mariti deponere, et pro tam magna sui confidentia in insulam deportari. In masculis etiam si repudium mittant hæc tria crimina inquiri conveniet, si Mœcham vel Medicamentariam vel Conciliatricem repudiare voluerit. Nam si ab his criminibus liberam ejecerit, omnem dotem restituere debet et aliam non ducere.

[1] Pusey wrote hesitatingly: "The law ascribed to Constantine, permitting it (divorce) in three (*sic*) cases only, perhaps had the sanction of the Church; although the later civil laws were laxer than those of the Church."—*Tert. Lib. Ff.* n. p. 232.

it was to be least expected. It is for the most part traceable to no less a person than Bishop Cosin. In a speech in the House of Lords, in the historic case of Lord Rosse's divorce,[1] he argued for a dissolution of marriage, and brought such an apparently overwhelming mass of authority, Conciliar and Patristic, into his pleading, that it carried no little weight in favour of the petition. There was, unhappily, no divine in the Upper Chamber sufficiently versed in the early literature and history of the Church to combat his statements; if there had been, the verdict might have been different. As it was, many of the Lay Peers were convinced, but only one, possibly two, of the Lords Spiritual went over to his side. The mischief, however, did not end there. Such is the respect for Cosin's name, and his reputation for

Cosin's carelessness the cause of much misunderstanding.

[1] "When there was a project in 1669 for getting a divorce for the King to facilitate it, there was brought into the House of Lords a bill for dissolving the marriage of Lord Rosse, on account of adultery, and giving him leave to marry again. This bill, after great debates, passed by the plurality of only two votes, and that by the great industry of the Lord's friends, as well as the Duke's enemies, who carried it on chiefly in hopes it might be a precedent and inducement to the King to enter the more easily into their late proposals; nor were they a little encouraged therein, when they saw the King countenance and drive on the bill in Lord Rosse's favour. Of eighteen bishops there were in the House only two voted for the bill, of which one voted through age, and one was reputed a Socinian. These in a note are said to be Dr. Cosin, Bp. of Durham, and Dr. Wilkins, Bp. of Chester." (*Quoted from the Editor's notes.*) *Works, Ang. Cath. Libr.* iv. 494, n.

learning is so great, that a number of controversialists have copied his statements as authoritative, without, it would seem, making any attempt to verify his quotations or examine the context of the passages from which his extracts were taken. And evil has resulted, not only from his learning, but also from his avowed catholic opinions. Presumably a churchman of Cosin's views would be strongly opposed to any relaxation of the marriage bond; he must, therefore, have had, it is supposed, most substantial grounds for disappointing his friends by taking such a decisive line of action in the opposite direction. We are confident that a candid investigation of the authorities to which he refers will reveal most serious misinterpretations; no one would accuse him of wilfully misstating the case, and the only satisfactory explanation of his conduct is to be found in a failure of memory and judgment consequent on his advanced age.

His advanced age the probable cause of his errors.

The Patristic testimony of this period is almost wholly confined to the writings of three eminent Fathers, S. Basil, Epiphanius, and S. Chrysostom, all of whom have been frequently claimed as opposed to the indissolubility of marriage. Even if the claim could be maintained, the weight of their authority would be slight compared

with that of the first three centuries, and for this reason it is almost impossible for us to estimate the extent of the revolution caused by the union of Church and State. The temptation to reduce the conflict between ecclesiastical and civil legislation must have been a very serious one; and the Church was not, at least if her chief writers may be taken as her exponents, wholly proof against it. The concessions, however, were by no means so large or unquestioned as they have been supposed to be. Cosin,[1] for instance, said: "S. Basil, in his Canons, approved by a General Council, is for marrying again," but he furnished no proof, as indeed he could not, of their having received the œcumenical sanction of the Church,[2] and the references given were only to one portion of his writings. The facts, however, are briefly these: in his earlier years S. Basil was strongly opposed to remarriage; then he wavered for a time, but in the end reverted to his original principles. It is worthy of note that he uniformly maintained that the laxer view of marriage, which was being taken up, was contrary to the teaching of Christ.

The change and fluctuation in S. Basil's views.

About 360 A.D. he wrote on the question of

[1] *Works, Ang. Cath. Libr.* iv. 493.

[2] The Council in Trullo to which he doubtless refers, can claim no such authority. The West entirely disallows it.

His earliest covictions.

divorce in certain ethical or moral treatises on the words of Scripture; and all that he says is distinctly opposed to the right of remarriage. He first lays down the obligation of married people to cleave to each other: "It is the duty of the husband not to be separated from his wife, and of the wife not to be separated from her husband, unless one of them be convicted of adultery, or be hindered in piety"; and he bases his argument upon the familiar passages, S. Matthew v. 31, 32; xix. 9; S. Luke xiv. 26; and 1 Corinthians vii. 10, 11. Then in the next section he explains that if, on either of these grounds, they did separate, they were obliged to abstain from any new connection: "for it is not lawful for a husband, after putting away his wife, to marry another; nor is it right for a wife who has been repudiated by one husband, to be married to another."[1]

Again he wrote: "She that forsaketh is an adulteress, if she have gone to another man, but the forsaken husband is pardoned, and she that lives with him is, on that account, not condemned." He confesses, however, that such a distinction is not based upon any Scriptural authority: but "our

[1] Quod vir ab uxore vel uxor a viro non debent separari, nisi alter deprehendatur in adulterio, aut pietatis sit impedimento . . . Quod non licet viro uxore dimissa aliam ducere, neque fas est repudiatam a marito ab alio duci.—*Opera*, ii. 308, ed. Ben.; *Reg.* lxxii. 1, 2.

Lord's decision, touching the unlawfulness of withdrawing from marriage, save for a matter of fornication, applies, if its meaning be enforced, equally to husbands and wives."[1]

His temporary defection.

Some fifteen years later he wrote in a different strain; he was influenced, as we have hinted, at least for the time, by the legislation of the State, and the prevailing custom of admitting a different standard of obligation for the husband and wife;[2] and he even expressed doubts upon what seem to us most elementary principles. It is from what he wrote, under these circumstances, that his advocacy has been claimed by those who would relax the law of the Church. To Amphilochius he wrote in 374 A.D., "Custom enjoins that adulterous husbands and such as live in whoredoms be retained by their wives. Wherefore, I cannot tell whether a woman living with a man, dismissed by his wife, can be called an adulteress."[3] Again, he wrote,

[1] *Ὥστε ἡ καταλιποῦσα μοιχαλὶς, εἰ ἐπ' ἄλλον ἦλθεν ἀνδρὰ, ὁ δὲ καταλειφθεὶς συγγωστός ἐστι, καὶ ἡ συνοικοῦσα τουτῷ κατακρίνεται.* —S. Basil, *ad Amphiloch*, Canon ix.

[2] Cf. *Van Espen.* Jus Ecclesiasticum Universum, i. 608. Quantumvis leges civiles plus viris quam mulieribus indulsisse videantur.

[3] *ἡ δὲ συνηθεία καὶ μοιχεύοντας ἄνδρας καὶ ἐν πορνείαις ὄντας κατέχεσθαι ὑπὸ γυναικῶν προστάττει ὥστε ἡ τῷ ἀφειμένῳ ἀνδρὶ συνοικοῦσα οὐκ οἶδα εἰ δύναται μοιχαλὶς χρηματίσαι.*—S. Basil, *ad Amphiloch.* Canon ix.

"As to the man who leaves a wife lawfully joined to him and marries another; by the decree of the Lord he incurs the sentence of adultery. And it was laid down by our fathers that such should be mourners for a year, hearers for two years, prostrators for three years, and in the seventh year should take their stand with the faithful, and so be deemed worthy of the oblation, if they repented with tears."[1] Although, therefore, he seems to sanction, for reasons we have suggested, the custom of granting to the husband liberty to contract a new tie, after separation from his first wife, without incurring the charge of adultery; yet in later life when he had become Bishop of Cæsarea, he testified to the strong condemnation of such a view according to the practice of the Church. Laxer views had grown up, and for a time S. Basil yielded his judgment therein, but it is quite clear that he saw their danger and gave the full weight of his maturer wisdom to prevent them spreading.

His later retraction.

[1] ὁ μέντοι καταλιμπάνων τὴν νομίμως αὐτῷ συναφθεῖσαν γυναῖκα καὶ ἑτέραν συναγόμενος, κατὰ τὴν τοῦ Κυρίου ἀπόφασιν, τῷ τῆς μοιχείας ὑποκεῖται κρίματι. Κεκόνισται δὲ παρὰ τῶν πατέρων ἡμῶν τοὺς τοιούτους ἐνιαυτὸν προσκλαίειν, διετίαν ἐπακρόεσθαι, τριετίαν ὑποπίπτειν. τῷ δὲ ἑβδόμῳ συνίστασθαι τοῖς πιστοῖς. καὶ οὕτως τῆς προσφορᾶς καταξιοῦσθαι, ἐὰν μετὰ δακρύων μετανοήσωσιν. *Epist.*, Class ii. Ep. ccxii.

The second of the Eastern writers is Epiphanius, who was made Bishop of Constantia (the ancient Salamis) in Cyprus in 367 A.D., and attained much celebrity as one of the chief champions of the Church against existing heresies. Indeed, there was scarcely any controversy in the fourth century in which his voice was not heard. Unfortunately his judgment on the right of remarriage after divorce is by no means clear and undoubted; and it is only given incidentally in dealing with the legitimacy of second marriages. As a strong ascetic he took the rigorist view of denying it altogether to the clergy, but while advocating abstinence in the case of laymen, as worthy of higher commendation, he granted them liberty if they chose to claim it. He seems, moreover, on the common interpretation, to place the husband who has been divorced from his wife in the same category with him who has been separated from her by death. Literally rendered, the passage is as follows: "But he that cannnot be content with the one wife, after she has died, *separation having been caused by reason of some pretext, fornication, adultery, or evil cause,* if he be joined to a second wife, the word of God does not accuse him, nor denounce him as an outcast from the Church and life eternal, S. Epiphanius.

but bears with him because of his infirmity, not with a view to his having two wives together, the first still surviving, but being cut off from the first, if it should happen that he be joined together by law to a second, him the Holy Word and the Holy Church of God compassionates, especially if he be in all things devout, and his manner of life be after the law of God."[1]

The ambiguity of the text of the passage on remarriage.

The passage is quite unintelligible as it is found in the only extant text; and it is absolutely necessary to "read into" it unauthorised conjectures in order to make it available for the direct support of re-marriage after divorce.[2] It would be equally competent for any one to conclude that the difficult passage written in italics[3] was an interpolation; and there is no doubt that its omission would greatly

[1] ὃ δὲ μὴ δυνηθεὶς τῇ μιᾷ ἀρκεσθῆναι τελευτησάσῃ, ἕνεκέν τινος προφάσεως, πορνείας ἢ μοιχείας ἢ κακῆς αἰτίας χωρισμοῦ γενομένου, συναφθέντα δευτέρα γυναικὶ, ἢ γυνὴ δευτέρῳ ἀνδρὶ, οὐκ αἰτιᾶται ὁ θεῖος Λόγος, οὐδὲ ἀπὸ τῆς ἐκκλησίας, καὶ τῆς ζωῆς ἀποκηρύττει ἀλλὰ διαβαστάζει διὰ τὸ ἀσθενὲς, οὐχ ἵνα δύο γυναῖκας ἐστὶ τὸ αὐτὸ ἔχῃ ἔτι περιούσης τῆς μιᾶς, ἀλλ' ἀπὸ μιᾶς ἀποσχεθεὶς, δευτέρᾳ, εἰ τύχοιεν, νόμῳ συναφθῆναι, ἐλεεῖ τοῦτον ὁ ἅγιος λόγος καὶ ἡ ἁγία ἐκκλησία· μάλιστα εἰ τυγχάνει ὁ τοιοῦτος τὰ ἄλλα εὐλαβὴς καὶ κατὰ νόμον Θεοῦ πολιτευόμενος.—*Epiph.* i. 497; *Adv. Hær.* lix. 4.

[2] For instance, in the above translation, which is that commonly adopted, it is inferred that we must insert "or" after the word "death," thus introducing two distinct cases, death *or* divorce; but there is absolutely no textual authority whatever for such an interpolation.

[3] The italics are for reference only.

simplify the argument, for, apart from this, all the author's remarks refer to the case with which he began, viz., separation by death. In any case, we have thought it necessary that attention should be called to the uncertainty of the text on which so much depends. Nothing but conjecture can make it at all intelligible, and it is obvious that conjecture is treacherous ground to build upon.

S. Chrysostom.

Perhaps the most important Eastern writer of the fourth century was S. Chrysostom, and it will be our duty to show that the weight of his name has been quite unjustifiably thrown into the scale on the side of those who would allow remarriage after divorce on the ground that the original tie had been dissolved by adultery.

His evidence frequently misquoted and misinterpreted.

Two passages from his writings have been often appealed to: the one to be misquoted and misunderstood, the other to be treated as an accurate dogmatic statement rather than a mere rhetorical outburst, which it manifestly is.

The earliest misinterpretation of the former passage was made by Bishop Cosin, in his speech for Lord Rosse. After naming several Councils, "which," he said, "give liberty to marry again," and certain Fathers which he asserted were

"for allowance of marriage after divorce," he gives the reference, "Chrysostom, *Homily*, xix.; 1 Cor. vii.," and quotes him as saying, *totidem verbis*, "marriage is dissolved by adultery, and the husband, after he hath put her away, is no longer her husband."[1]

Now, what did S. Chrysostom really mean? He was expounding the passage: "If any brother have a wife that believeth not, and she be well pleased to dwell with him, let him not put her away;" and he drew a distinction between her and the wife who had become unclean by adultery. Separation was necessary in this latter case, because "he that is joined to a harlot is one body"; therefore, to continue to live in conjugal intercourse with her would be to partake of her uncleanness. He was a partner with her in that wherein she was unclean; but in the case of an unbelieving wife, he might live with her as an husband without partaking of her unbelief. There is an inevitable "communion and mixture" in that which is physical in the flesh; there is none of necessity in that which is purely mental in the spirit. In the latter case the husband's communion is not in that element wherein the wife is unclean. And though S. Chrysostom

[1] *Works*, iv. 494.

says, "after the fornication the husband is not an husband," and that the adulterous wife "has destroyed the rights of marriage," he shows clearly that he did not mean what Cosin implied, for in the preceding paragraph he had counselled that if a separation were inevitable it should only be *a toro*; "it were better," he says, "that such things should not be at all, but, if they should take place, let the wife remain with her husband without cohabiting with him, so as not to introduce any other to be her husband."[1] This is not the language of a man who held that adultery dissolved the marriage tie.

The second statement to which the advocates for the remarriage of the divorced appeal is "the adulteress is no man's wife." Taken as an isolated declaration it may, of course, be interpreted to show that, in the judgment of him who made it, adultery dissolved the marriage tie; but this was as far as possible from being the sense in which S. Chrysostom applied it. He was trying to imagine the feelings of a man who had allied himself with a divorced woman, and he asks "what sort of a life would he lead? in what way will he cross the threshold of his

[1] *βέλτιον μὲν μηδὲ γενέσθαι τὴν ἀρχήν, φησω, εἰ δὲ ἄρα γένοιτο, μενέτω ἡ γυνὴ μετὰ τοῦ ἀνδρὸς, εἰ καὶ μὴ τῇ μίξει, ἀλλὰ τῷ μηδένα ἕτερον εἰσαγωγεῖν ἄνδρα.—Hom.* xix. 1, ad Cor.

house? with what feelings, with what eyes, will he look upon that man's wife who is now his own? Nay, rather, one could not rightly call such a woman either his or his own wife; for the adulteress is no man's wife. She has broken the covenant she made with him, and she has not come to you with a lawful sanction." [1]

His express teaching on the permanence of the bond.

The passage assumes a changed aspect when read with its context. Indeed, it is only a portion of an exposition which sets forth, perhaps as plainly as words can express it, the absolute indissolubility of the marriage bond. He confesses that it will probably be an unwelcome doctrine, but it was the law, and he dared not be silent. "The wife is bound by the law"; she may not, therefore, under any circumstances, be separated during her husband's lifetime, or bring in another husband, or enter into a second marriage. And see how carefully the Apostle chose appropriate language, for he did not say, that she should cohabit with her husband as long as he lived, but what? "a wife is bound by the law as long as her husband is alive"; even, therefore, if she were to give him a writ of divorce, though she left his roof, though she went to live with another

[1] *οὐδὲ ἐκείνου, οὔτε αὐτοῦ δικαίως ἄν τις τὴν τοιαύτην προσείποι, ἡ γὰρ μοιχαλὶς οὐδενός ἐστι γυνή. καὶ γὰρ τὰς πρὸς ἐκεῖνον συνθήκας ἐπάτησε, κ.τ.λ.*

man, she is still bound by the law, and she is an adulteress. When, therefore, a man wishes to cast out his wife, or a wife to leave her husband, let her remember that saying, and imagine that S. Paul is before her eyes, and following hard after crying and saying, "The wife is bound by the law." For just as runaway slaves, though they leave their master's house, drag their chains with them; so, too, women, though they leave their husbands, have the law condemning them, and as a chain pursuing after them and accusing them of adultery, and accusing such as take them to wife, and saying, "Her husband is still living, and your act is adultery."[1]

There is yet another passage so express and definite, that it ought to have created at once a

[1] *οὐκοῦν οὐ δεῖ ἀποσχίζεσθαι ζῶντος τοῦ ἀνδρός, οὐδὲ ἕτερον ἐπεισάγειν νυμφίον, οὐδὲ δευτέροις ὁμιλεῖν γάμοις. καὶ ὅρα πῶς μετὰ ἀκριβείας καὶ αὐτῇ τῶν λεξέων τῇ φύσει κέχρηται, οὐ γὰρ εἶπε, συνοικείτω τῷ ἀνδρὶ, ἐφ' ὅσον χρόνον ζῇ, ἀλλὰ τί; γυνὴ δέδεται νόμῳ, ἐφ' ὅσον χρόνον ζῇ ὁ ἀνὴρ αὐτῆς. ὥστε κἂν βίβλιον ἀποστάσιου δῷ, καὶ τὴν οἰκίαν ἀφῇ, κἂν πρὸς ἄλλον ἀπέλθοι, τῷ νόμῳ δέδεται, καὶ μοιχαλίς ἐστιν ἡ τοιάυτη. ἐὰν τοίνυν ὁ ἀνὴρ ἐκβάλλειν βούληται τὴν γυναῖκα, καὶ ἡ γυνὴ τὸν ἄνδρα ἀφεῖναι, ταύτης ἀναμιμνησκέσθω τῆς ῥήσεως καὶ τοῦ* Παύλου *νομιζέτω παρεῖναι καὶ καταδιώκειν αὐτὴν βοῶντα καὶ λέγοντα, γυνὴ δέδεται νόμῳ. καθάπερ γὰρ οἱ δραπετεύοντες οἰκέται, κἂν τὴν οἰκίαν ἀφῶσι τὴν δεσποτικὴν, τὴν ἄλυσιν ἔχουσιν ἐπισυρομένην. οὕτω καὶ γυναῖκες κἂν τοὺς ἀνδρὰς ἀφῶσι, τὸν νόμον ἔχουσι καταδικάζοντα ἀντὶ ἀλύσεως κατηγοροῦντα μοιχείαν, κατηροροῦντα τῶν λαμβανόντων, καὶ λέγοντα περίεστιν ὁ ἀνὴρ ἔτι καὶ μοιχεία τὸ γενόμενόν ἐστι. De libello repudii*, Oper. iii. 203-4, Ben. ed.

doubt of the justice of invoking S. Chrysostom's authority in support of the remarriage of the divorced. In commenting on our Lord's words, "He that putteth away his wife causeth her to commit adultery, and he that marrieth a divorced woman committeth adultery," he says, "The former, though he take not another wife, by that act alone hath laid himself open to blame, having made the first an adulteress; the latter, again, is become an adulterer by taking her who is another's. For tell me not this, 'the other hath cast her out'; nay, for when cast out she continues to be the wife of him that expelled her"; and again he says, "She positively must keep the husband who was originally allotted to her, or being cast out of that house, not have any other refuge."[1]

The conclusion which a careful and critical investigation of the available evidence in the second period of Church History in the East forces upon us is, that though there is not the same absolute unani-

[1] ὁ μὲν γὰρ κἂν ἑτέραν μὴ λάβῃ, τούτῳ αὐτῷ κατέστησεν ἑαυτὸν ἐγκλήματος ὑπεύθυνον, μοιχαλίδα ποιήσας ἐκείνην. ὁ δὲ τῷ τὴν ἀλλοτρίαν λαβεῖν, μοιχὸς γέγονε πάλιν. μὴ γάρ μοι τοῦτο εἴπῃς, ὅτι ἐξέβαλεν ἐκεῖνος. καὶ γὰρ ἐκβληθεῖσα μένει τοῦ ἐκβαλόντος οὖσα γυνή. . . . πᾶσα ἀνάγκη ἢ τὸν ἐξ ἀρχῆς κληρωθέντα ἔχειν, ἢ τῆς οἰκίας ἐκπεσούσαν ἐκείνης μηδεμίαν ἑτέραν ἔχειν καταφυγήν, καὶ ἄκουσα ἠναγκάζετο στέργειν τὸν σύνοικον. *Hom.* xvii. in S. Matt.

ity and unhesitating language as characterised the
rlier witnesses, yet the deflection from the primi-
ve standard of the indissolubility of marriage is
rdly so serious as under the circumstances might
ave been reasonably expected.

VIII.

Testimony of the Western Church during the same period.

S. Jerome.

As we return from the East to the West, we find ample means for deciding what this branch of the Church held on the nature of the marriage tie. Three of the most famous of all the Fathers wrote, and wrote abundantly during the period under consideration: viz., S. Jerome, S. Ambrose, and S. Augustine; and in each and all there is the fullest corroborative testimony for the ante-Nicene interpretation. Nevertheless, two of the three have been invoked in favour of divorce and remarriage,[1] and the third as a doubtful authority.[2] Let us first examine the evidence of S. Jerome upon which Cosin and others have claimed his support.

Further misinterpretations of Bishop Cosin.

In 399 A.D. he wrote upon a case which had attracted some considerable attention. One Fabiola had deserted her lawful husband and contracted a second marriage during his lifetime; and S. Jerome

[1] Cosin, *ut supra*, p. 494-5.

[2] *Bingham*, XXII. v. § 2.

S. Jerome's apology for Fabiola.

speaks of her conduct in a very lenient manner as admitting of a strong excuse. It will be found, however, on investigation, that in so doing he did not surrender one particle of his belief in that great principle which the Church held to be right; indeed, he safeguarded himself more than once against any such charge. He dwells, it is true, on the terrible aggravations that the wife had received through the unspeakable viciousness of her husband, but having done so, he almost immediately adds, "but if one be dismissed, she ought to remain unmarried."[1] He asserts, too, that Fabiola had acted in entire ignorance of what was the Divine law; that "she had persuaded herself and thought that she had lawfully put away her husband, and she did not know the full force of the Gospel, in which every plea for wives marrying again is cut away, while their husbands are alive."[2] Furthermore, he goes at length into the history of her conduct after she had discovered her sin in marrying a second

[1] "Præcepit Dominus uxorem non debere dimitti, excepta causa fornicationis: et si dimissa fuerit, manere innuptam. Quidquid viris jubetur, hoc consequanter redundat in feminas."—*Ep.* lxxxiv., *ad Oceanum*, N. 650, Ben. ed.

[2] "Igitur a Fabiola, quia persuaserat sibi, et putabat a se virum jure dimissum: nec Evangelii vigorem noverat, in quo nubendi universa caussatio viventibus viris, feminis amputatur, dum multa diaboli vitat vulnera unum incauta vulnus accepit."—*Ibid.*

husband. "She put on sackcloth and did penance in the sight of all Rome. She was as contrite and overwhelmed with grief as if she had wilfully committed adultery; and after she had been publicly readmitted to communion, she surrendered all her enormous fortune for the good of the poor, and provided medicines for the sick, administering them with her own hands. She hoped it would be some reparation for her sin. All this must be remembered when S. Jerome's leniency towards her is brought up. Writing some years after her death, and full of admiration for the depth of her penitence, he could not find it in his heart, as a private individual, to speak severely of her memory; but, as an exponent of the law and discipline of the Church, he upheld as firmly as he could the indissolubility of marriage, and condemned in the same breath the Imperial laws, which, he said, were different from those of Christ.[1]

There is no other passage in his writings that can possibly be twisted into approval of remarriage after divorce; but there are several in which it is categorically condemned. "It is said in Scripture (Prov. xviii. 23, LXX.),[2] "He who retaineth an adulteress is foolish and ungodly." Wherever, then,

[1] Cf. *Ep.* lxxxiv., *ad Oceanum*, p. 659.

[2] xviii. 23 (LXX.). This is absent from the Hebrew text, which has quite a different termination to the chapter.

there is fornication, and suspicion of fornication, a man is free to put away his wife. And because it might come to pass that one made a false accusation against the innocent, and with a view to a second marriage, might cast a stigma on the former one, he is ordered so to put away his wife as not to have another whilst the first is alive;" and the same rule applies also to the wife, "She may not take another husband."[1] Here he urges expediency as a reason for the prohibition; but elsewhere he places it upon the highest grounds in reply to Amandus, who sought for advice in dealing with a woman who had left her husband for his adultery, and had been drawn against her will into a second marriage; he says, "The Apostle cuts off all excuses, and has openly decided that, in her husband's life-time, his wife is an adulteress if she have married another. It matters not that you tell me of the violence of the ravisher . . . as long as the husband

[1] Dicente Scriptura: "*Qui adulteram tenet stultus et impius est.* Ubicumque est igitur fornicatio, et fornicationis suspicio, libere uxor dimittitur. Et quia poterat accidere, ut aliquis calumniam faceret innocenti, et ob secundam copulam nuptiarum, veteri crimen impingeret, sic priorem dimittere jubetur uxorem, ut secundam prima vivente non habeat. Quod enim dicet, tale est: Si non propter libidinem, sed propter injuriam dimittis uxorem: quare expertus infelices priores nuptias, novarum te immittis periculo? Necnon quia poterat evenire ut juxta eamdem legem uxor quoque marito daret repudium, eadem cautela præcipitur, ne secundum accipiat virum."—*Com. in S. Matt.*, xix. 9, iv. 87.

lives, even though he be an adulterer or something worse, covered from head to foot with vices . . . he is still accounted her husband, and she may not marry another." He affirms, too, that this direction of S. Paul is based upon our Lord's unqualified verdict; for, after setting this forth, he excludes the possibility of such an exemption. "Observe," he says, "His expression, 'Whoso marrieth one dismissed is an adulterer'; whether she have herself dismissed her husband, or have been dismissed by her husband, the man who marries her is an adulterer." [1]

We submit, then, that on the above evidence, and there is nothing more to rely upon, such a statement that "S. Jerome was for allowance of marriage after divorce" admits of no justification.

[1] Omnes igitur causationes Apostolus amputans, apertissime definivit: vivente viro adulteram esse mulierem, si alteri nupserit. Nolo mihi proferas raptoris violentiam, matris persuasionem, patris auctoritatem, propinquorum catervam, servorum insidias atque contemtum, damna rei familiaris. Quamdiu vivit vir, licet adulter sit, licet sodomita licet flagitiis omnibus coopertus, et ab uxore propter hæc scelera derelictus, maritus ejus reputatur, cui alterum virum accipere non licet.

Nec Apostolus hæc propria auctoritate decernit, sed Christo in se loquente, Christi verba sequutus est, qui ait in Evangelio: *Qui dimittit uxorem suam, excepta causa fornicationis, facit eam mœchari: et qui dimissam acceperit, adulter est.* Animadverte quid dicat: Qui dimissam acceperit, adulter est: sive ipsa dimisserit virum, sive a viro dimissa sit, adulter est qui eam acceperit.—*Opera*, vol. iv. p. 162.

There is not much in S. Ambrose's writings directly bearing upon divorce, but as his authority has been unfairly appealed to, we desire to present the evidence in its true light, and free his name from the aspersion cast upon it. In expounding the passage "Whosoever putteth away his wife and marrieth another, committeth adultery; and whosoever marrieth her that is put away from her husband, committeth adultery."[1] He writes, "Refuse, therefore, to put away a wife, lest you distrust the belief that God created your marriage tie. For if you ought to put up with and conceal the conduct of strangers, much more that of your wife. Hear what the Lord has said: 'He who putteth away his wife causeth her to commit adultery.' For the desire to sin may find its way into one who may not marry again while her husband is alive. . . . Supposing that after being divorced she does not marry, ought she then to lose your favour when she remains constant to you, even though you are an adulterer? Supposing that she does marry, the crime of her necessity lies at your door, and what you regard as marriage is nothing less than adultery."[2] S. Ambrose.

[1] S. Luke xvi. 18.

[2] Noli ergo uxorem dimittere, ne Deum tuæ copulæ diffitearis auctorem. Etenim si alienos multo magis uxoris debes tolerare

Nothing could be plainer than the judgment expressed upon the sin and illegality of the divorced wife marrying again, as it is here set forth; and, if he had written on the husband's remarriage, there can be little doubt that he would have pronounced it equally illegal, for S. Ambrose upheld more strongly than any other of the early Fathers the perfect equality of husband and wife.

Cosin's confusion of S. Ambrose with an unknown writer.

It is almost unaccountable that, in the face of his generally accepted teaching, Bishop Cosin should have quoted him as saying that "a man may marry again if he have put away an adulterous wife." The passage referred to is in a Commentary on the First Epistle to the Romans, where he gives as a reason for the distinction between the right to remarry of the husband and the wife, that "the husband is not bound by the law, as the wife is, for the man is the head of the woman."[1] Pusey, in his note on

et emendare mores. Audi quid dixerit Dominus: *Qui dimittet mulierem facit eam mœchari.* Etenim cui non licet vivente viro, mutare conjugium potest obrepere libido peccandi. Pone, si repudiata non nubat. Et hæc viro tibi debuit displicere, cui adultero fidem servat? Pone, si nubat. Necessitatis illius tuum crimen est: et conjugium quod putas, adulterium est.—S. Ambrose, i. 1471-2, Ben. ed.

[1] "Et ideo non subjecit dicens, sicut de muliere: quod si discesserit, manere sic; quia viro licet ducere uxorem, si dimiserit uxorem peccantem: quia non ita lege constringitur vir, sicut mulier; caput enim mulieris vir est."—*Opera*, vol. ii. p. 133.

Tertullian, assigns this dictum to an unknown author, designated Ambrosiaster, whose sentiments differed very widely from those of S. Ambrose.[1]

S. Augustine wrote more fully and frequently upon the subject of marriage and divorce than any other of the Fathers, and his testimony is absolutely overwhelming in favour of the indissolubility of the tie. It becomes a matter, however, of no little difficulty to make a selection of passages which will do proper justice to the strength of his convictions. Once, it is true, he used language which has been construed in an opposite sense; but the circumstances were exceptional, and must be taken into full consideration. He was not dealing with professed Christians, but with Catechumens, and in their case he showed a willingness to make concessions and to accept them as candidates for baptism, even though they took a lower standard in this one particular than the Church maintained. This is what he says: "Whosoever hath put away a wife taken in adultery, and married another, does not seem as if he ought to be placed on a level with those who put away a wife and remarry for

S. Augustine

His concessions to candidates for baptism.

[1] Though in the middle ages the Commentary was assigned to S. Ambrose, scholars have long ago decided, both from the diversity of style and the inconsistency of sentiments, that it is not genuine. It is attributed to Hilary, the deacon, by most modern writers.

other causes than adultery." He adds a little later, that "there can be no doubt that open flagrant breaches of chastity are an effectual barrier against baptism, unless they be corrected by change of will and repentance; and also that efforts should be made to prevent doubtful unions, . . . but if it so happen that these have been formed, I cannot say whether those who have formed them may not be eligible for baptism as others are."[1] S. Augustine exercises a charity towards those who had been brought up under different laws, which it would be difficult to condemn. They had contracted marriages, which were in the light of Scripture wrong, but they had done it in ignorance, and they could not be placed in the same category with the deliberate adulterer. Their case was covered by the principle, "Fieri non debuit, factum valet."[2] Such a charitable judgment in an exceptional case of this nature may not be used with any fairness as though it were of general application.

[1] Quisquis etiam uxorem in adulterio deprehensam dimiserit, et aliam duxerit, non videtur æquandus eis qui excepta causa adulterii dimittunt et ducunt. . . . Quamobrem quæ manifesta sunt impudicitiæ crimina, omni modo a baptismo nisi mutatione voluntatis et pœnitentia corrigantur; quæ autem dubia, omni modo conandum est ne fiant tales conjunctiones. Si autem factæ fuerint, nescio utrum ii qui fuerint, similiter ad baptismum non debere videantur admitti.—*Opera*, vi. 319, Paris ed.

[2] Cf. Keble's *Sequel*, p. 123.

Only if the passage be isolated from its context, it seems, can it be interpreted as lending any sanction to the popular notion that Christianity accepts a different law for the innocent and the guilty touching the right of remarriage; but if S. Augustine had intended to indorse this view, he would have known that he was directly contradicting almost everything that he had said and reiterated again and again elsewhere.

The following passages will serve to illustrate his belief: "It is not lawful for you to have wives whose former husbands are alive, nor may you, women, have husbands whose former wives are alive. Such unions are adulterous, not by the law of a human court, but by the Divine law. Neither may you marry a woman who has been divorced from her husband, whilst he is alive. For fornication alone may you put away a wife, and while she lives, it is unlawful for you to marry another."[1]

If, in what follows here, he puts the case hypothetically, the context shows indisputably that it

[1] Non vobis licet habere uxores, quarum priores mariti vivunt: nec vobis, feminæ, habere viros licet, quorum priores uxores vivunt. Adulterina sunt ista conjugia, non jure fori, sed jure cœli. Nec eam feminam quæ per repudium discessit a marito, licet vobis ducere vivo marito. Solius fornicationis causa licet uxorem adulteram dimittere: sed illa vivente non licet alteram ducere.—*Serm.* cccxcii. *ad conjugatos*, v. 2240.

carried with it not a shadow of doubt in his own mind: "Furthermore, if neither she may not marry while the husband from whom she departed is alive, nor may he take another wife while the one whom he put away is alive, much less is it permitted to form illicit connections with any whatever." [1]

Subsequently, in speaking of our Lord's command, "And let not the husband put away his wife," he asks, "Why did He not add, 'except for the cause of fornication,' unless He meant us to understand the like formula, that, if he put her away, as he may do for fornication, he should remain unmarried?" [2]

The conclusion he arrives at, after considering the statement, "Whosoever marries a woman separated from her husband," is this: "Whether she has put away or has herself been put away, she ought to remain unmarried, or to be reconciled to her husband." [3]

[1] Jamvero si nec illi nubere conceditur viro a quo recessit, necque huic alteram ducere viva uxore quam dimisit; multo minus fas est illicita cum quibus libet stupra committere.—*De Serm. Dom. in Monte*, 39. (xiv.) iii. 15, 16.

[2] Quare non addidit, excepta causa fornicationis, quod Dominus permittit; nisi quia similem formam vult intelligi, ut si dimiserit (quod causa fornicationis permittitur), maneat sine uxore.—*Id.* p. 1518.

[3] Ex quo colligitur, sive dimissa fuerit, sive dimiserit, opportere illam manere innuptam, aut viro reconciliari.—*Id.* p. 1522.

At the beginning of the fifth century he wrote a treatise on "The Blessings of Marriage," in which he says that "the union of man and woman is so commended to us in the Divine Word, that neither may a wife dismissed by her husband marry another as long as her husband lives, nor may a husband put away by his wife take another in marriage, unless she who had left him should have died." [1] On the blessings of marriage.

Again: "Wedlock, once contracted in the city of our God, where also, from the first union of two human beings, marriage creates a sort of sacrament, cannot be possibly dissolved, save through the death of one of them." [2]

Yet once more: "With the people of God, the blessing of marriage lies in the sacredness of the sacrament, by which it becomes an unholy thing for one separated by divorce to marry during her husband's lifetime." [3]

[1] Cujus confœderationem ita divina Scriptura commendat, ut nec dimissæ a viro nubere liceat alteri, quamdiu vir ejus vivit; nec dimisso ab uxore liceat alteram ducere, nisi mortua fuerit quæ recessit.—*De Bono Conjugali*, vi. 544.

[2] Semel autem initum connubium in civitate Dei nostri, ubi etiam ex prima duorum hominum copula quoddam sacramentum nuptiæ gerunt, nullo modo potest nisi alicujus eorum morte dissolvi.—*Id.* vi. 556.

[3] Quod autem ad populum Dei pertinet, etiam in sanctitate Sacramenti, per quam nefas est etiam repudio discedentem alteri nubere dum vir ejus vivit.—*Id.* vi. 568.

Nearly twenty years later he had a controversy with Pollentius on the right interpretation of S. Paul's words, "Unto the married I command, yet not I, but the Lord, Let not the wife depart from her husband, . . . and let not the husband put away his wife"; and in this he insists on the wife and the husband remaining unmarried after divorce, and appeals to S. Paul's authority to show that there was the same rule for both. Both alike were guilty of adultery[1] if they married till the death of one had severed the bond.

Besides this, he disputed the position which Pollentius had taken up in maintaining that marriage was as much dissolved by adultery as by death, and he drew his argument from S. Paul's declaration, that a "woman which hath an husband is bound by the law to her husband as long as he liveth; but if her husband be dead, she is loosed from the law of her husband: so then, if, while her husband liveth, she be married to another man, she shall be called an adulteress." "These words," he wrote, "so often repeated and so often enforced, are true, are living, are sound, are perfectly clear. No woman can

[1] At si par forma est in utroque, uterque mœchatur, si se alteri junxerit, etiam cum se a fornicante disjunxerit. Parem vero esse formam in hac causa viri atque mulieris ibi ostendit Apostolus.—*De Conjug. Adulter.* i. 8 (viii.), vi. 664.

begin to be the wife of a second husband unless she has ceased to be that of the first; but she ceases to be the wife of the first if he be dead, not if she commit adultery. . . . The tie to her first husband remains intact, and, because it is so, he is guilty of adultery who marries her, even though she have been put away for fornication." [1]

There is similar evidence in his account of the creation of woman, in which he speaks of the threefold purpose of marriage, viz., Faith, Offspring, and Mystery or Sacrament. Of the third he writes, "It is provided that the marriage tie be not dissolved, and that neither the man nor the woman, if put away, may be joined to another, no not for the sake of offspring; this is as it were the marriage rule." [2]

Lastly, in his treatise on "The Blessings of Widow-

[1] *Mulier* enim *sub viro, vivo marito, juncta est legi;* hoc est in corpore constituto. *Si autem mortuus fuerit,* hoc est, de corpore exierit, *evacuata est a lege viri. Igitur vivente viro, vocabitur adultera, si fuerit cum alio viro. Si autem mortuus fuerit vir ejus, liberata est a lege, ut non sit adultera, si fuerit cum alio viro.* Hæc verba Apostoli toties repetita, toties inculcata, vera sunt, viva sunt, sana sunt, plana sunt. Nullius viri posterioris mulier uxor esse incipit, nisi prioris esse desiverit. Esse autem desinet uxor prioris, si moriatur vir ejus; non si fornicetur. Licite itaque dimittitur conjux ob causam fornicationis; sed manet vinculum prioris, propter quod sit reus adulterii qui dimissam duxerit etiam ob causam fornicationis.—*De Conjug. Adulter.* vi. 686.

[2] In sacramento autem, ut conjugium non separetur, et dimissus aut dimissa nec causa prolis alteri conjungatur. Hæc est tanquam regula nuptiarum.—*Id.* iii. 399.

hood," he asserts that "marriage is a sacrament indissoluble as long as the husband and wife are alive."[1]

The above passages leave no doubt that S. Augustine was strongly convinced that nothing but death could break the marriage bond. If, however, any should dispute it, the part that he took in the Council of Milevi, which passed an uncompromising Canon on Divorce, to be hereafter noticed, ought to set the matter at rest. There were, it is true, many questions associated with marriage which perplexed his mind, and led him from time to time to speak as though all was not clear; and men have extracted from his writings on the subject certain expressions which bespeak uncertainty, such as *difficilima quæstio*, *obscurissima quæstio*, and have used them to qualify the belief with which he is generally credited. They may, however, be rightly interpreted as referring to other "delicate and intricate problems connected with the whole subject of marriage, which would be very apt to suggest difficulties to a person of S. Augustine's peculiar subtle and fine mind."[2] One such problem was his interpretation of that "fornication" which was held to justify separation; he

S. Augustine's difficulties on other aspects of marriage.

[1] De conjugio, . . . indissolubili, quamdiu ambo vivunt matrimonii sacramento.—*De Conjug. Adulter.* vi. 629.

[2] Cf. Reply to Lord A. Hervey's *Letter on Marriage and Divorce*, by Rev. Morton Shaw; pub. Parker, 1857.

had serious doubts whether it was not intended to include unfaithfulness in religion, and to justify the dissolution of marriage with an unbeliever.

Innocent I. Bishop of Rome.

There is one other writer whose testimony is very forcible. At the beginning of the fifth century Innocent I. was Bishop of Rome, and a number of his letters have come down to us. In a rescript to Exsuperius, Bishop of Toulouse, he sets forth the law of the Church at the time on the subject of divorce. "Your charity made inquiry touching those also, who, after divorce had taken place, united themselves with another in marriage. It is evident that these on both sides are adulterers. Those, therefore, who when their wives are still living hurry to another union, cannot seem anything but adulterers, even though the marriage appear to have been broken. This is so strictly true that those also, to whom the said husbands are united, must seem themselves to have committed adultery."[1]

A few years later this rescript was confirmed by

[1] De his etiam requisivit dilectio tua, qui intervenienti repudio alii se matrimonio copularunt: quos in utraque parte adulteros esse manifestum est. Qui vero vel uxore vivente, quamvis dissociatum videatur esse conjugium, ad aliam copulam festinarunt, neque possunt adulteri non videri; in tantum ut etiam hæ personæ, quibus tales conjuncti sunt, etiam ipsæ adulterium commisisse videantur.—*Ep.* iii. *ad Exsuper.* § 6; *Hard. Concil.* i. 1005.

The Council of Milevi.

the important African Council of Milevi,[1] 416 A.D., and the Canon confirming it was forwarded to Innocent at Rome. This assembly was regarded as more than a mere Provincial Synod, for several of its decrees were accepted at the General Councils of Ephesus and Chalcedon, and are still binding on the Catholic Church. The seventeenth Canon decreed that, "according to the Evangelical and Apostolical discipline, neither may a man put away by his wife, nor a woman by her husband, be united to another, but that they should so remain or be reconciled to each other; and if they disregard this law, they must be subjected to penance." So anxious were the Bishops to give weight to their decision that they added to it a determination to obtain an Imperial edict to enforce it. This, however, they failed to procure.

The Council of Carthage.

It has been argued that a Council of Carthage "implied at least that, under some circumstances, a divorced woman might be married."[2] The argument was based on an incidental notice of certain regulations to the bishops touching Ordination: that

[1] No less than sixty bishops were present. They passed twenty-seven Canons on discipline. S. Augustine not only subscribed them, but sent a private letter to the Pope accompanying the synodical commendation of them.

[2] Cf. Smith, *Dict. of Antiq. ut supra*. Hefelé calls it the ninth synod, and dates it at 407 A.D.

"the clergy were forbidden to be married to a divorced woman." The Canon fixed a penalty in case a bishop should ordain one so married; but it gave no sanction to the legality of such a marriage under other circumstances. The writer of the article ought to have avoided committing himself to such an inference from the knowledge that the far more memorable Council of Carthage, a few years before, had imposed penance on any one guilty of forming such an union. Indeed, it passed the very Canon which was afterwards adopted by the Council of Milevi.[1]

While, then, the Church of the East, dwelling, so to speak, under the shadow of the Imperial throne, was not altogether proof against the secular power in its attempts to subordinate the Ecclesiastical to the Civil Code, the West, with three great champion defenders, presented an united front, and held its position practically unbroken.

[1] It was confirmed as a Canon for the African Church by 217 Fathers, with the title, *περὶ τῶν τοὺς ἄνδρας ἢ τὰς γυναῖκας ἀπολυόντων ἵνα οὕτως μείνωσιν.—Concil. Carthag. apud Zonaram*, can. 116; *apud Balsamon*, 105.

IX.

The Serious Declension of the Eastern Church from the Primal Standard.

Sufficiency of the foregoing evidence to the satisfy Vincentian test.

OUR aim has been to learn the mind of the Early Church as far as it has been expressed by Patristic writings, and in Conciliar canons and decrees. This has been done. If any doctrine or practice can bear the test of universality, antiquity, and consent,[1] it is surely the primitive belief in the indissolubility of marriage. In the certainty of this conviction we might leave the history, but there is a point of very special interest to every English Churchman, which remains to be brought out. It is this. Though the East subsequently fell away from the teaching of antiquity, and though at times the Latin Church in Provincial Synods may have accepted some questionable Canons, yet the Anglican branch has approached very near to an uniform consistency all through her lengthened history.

[1] Vincentius, *Commonit.*, ii. *ad fin.*

In the fifth and sixth centuries the leaders and rulers of the Eastern Church offered but a feeble resistance to the power of the State, while the laws of marriage became less and less strict. Honorius allowed divorce even on most trivial pretexts, satisfying his conscience by imposing some insignificant penalties on those who availed themselves of the privilege. Theodosius the Younger began his reign by abrogating these penalties; and, doing everything in his power to facilitate divorce, he brought back the licence of the ancient Paganism. The country, however, felt that he had overstepped the bounds, and he was compelled to revoke much of the new constitution. We may gauge the extent of what was still tolerated by the fact that the Marriage Code continued to allow a husband to divorce his wife if she dined with strangers without his leave, or attended the circus or amphitheatre against his wishes, and to allow a wife to leave her husband, if he should be found guilty of robbery or consorting with thieves.[1]

The legislation of Honorius and Theodosius the Younger.

439 A.D.

449 A.D.

Justinian made an attempt to restrict the existing freedom of divorce allowed by his predecessors, but hardly as much as has been sometimes assumed. One cause, however, which struck at the root of morality,

The Code of Justinian.

[1] *Cod.* v. xvii.; *Novellæ*, 22, 107, 134.

he insisted on removing: dissolution of marriage by mutual consent was absolutely prohibited.[1]

These Laws of Justinian became so irksome to his subjects that his successor was obliged to repeal the penalties that attached to the breach of them.[2]

While the Civil Code sanctioned such a low standard of morality, it was most difficult for the Church to maintain her principles. Individuals raised their voices against the increasing laxity, but when we realise what a shield the Imperial power must have thrown over those who were bent on the gratification of their own sinful appetites, it goes without saying that their admonitions were unheeded. One such remonstrance, couched in earnest and forcible language, has come down to us, and it is worthy of notice, not only for its protest, but for the fearful revelation it gives of the prevailing contempt for the marriage tie. It is preserved in the Homilies of Asterius, Bishop of Amasea in Pontus, in the time of Honorius. "Hear this," he says to the profligate husbands, "'What God hath joined together, let no man put asunder'; hear this, ye hucksters in such things, changing your wives as

[1] Justinian's legislation on the whole question of marriage may be found in the *Novellæ*, 117, § 10, 12, and 134, § 11.

[2] *Novellæ*, 140.

carelessly as you change your clothes, who set up bridal-chambers as frequently and easily as ye do shops at a fair; who marry wealth and make merchandise of wives; who take offence at trifles and immediately write a bill of divorce; who leave many widows even while you live. Listen to me and be satisfied that nothing can separate the marriage bond but death and adultery."[1]

At the beginning of the eleventh century the Eastern Church stereotyped its concessions to the State legislation. Alexius, Patriarch of Constantinople, drew up a series of Canons on the Dissolution of Marriage, and these have been considered binding ever since. They are as follows:

The Matrimonial Canons of the 11th century.

1. "The Priest who gives the marriage blessing to a woman divorced from her husband is not to be condemned, if the man's conduct was the cause of separation."
2. "Women divorced from husbands whose conduct was the cause of separation, are

[1] ὁ συνέζευξεν ὁ θεὸς, ἄνθρωπος μὴ χωριζέτω. . . . ἀκούετε δὲ νῦν, οἱ τούτων κάπηλοι, καὶ τὰς γυναῖκας ὡς ἱμάτια εὐκόλως μετενδυόμενοι. οἱ τὰς παστάδας πολλάκις καὶ ῥαδίως πηγνύντες, ὡς πανηγύρεως ἐργαστήρια. οἱ τὰς εὐπορίας γαμοῦντες καὶ τὰς γυναῖκας ἐμπορευόμενοι. οἱ μικρὸν παροξυνόμενοι, καὶ εὐθὺς τὸ βιβλιον τῆς διαιρέσεως γράφοντες. οἱ πολλὰς χήρας ἐν τῷ ζῆν ἔτι καταλιμπάνοντες. πείσθητε, ὅτι γάμος θανάτῳ μόνῳ καὶ μοιχείᾳ διακόπτεται.—*Hom.* 5, ed. Combesis, Paris, 1648.

blameless, if they wish to marry (again), and so are the Priests who give them the blessing on the union. The same rule applies to men."

3. "The man who marries a woman divorced for adultery, whether he has himself been married before or not, is an adulterer, and must submit to the penance of adulterers."
4. "The Priest who gives his blessing on second marriages for those who have dissolved their marriage by mutual consent, which is not sanctioned by the laws,[1] shall be deprived of his office." [2]

The principle embodied in these Canons is that the innocent party is free to marry again after

[1] If the reference is to the Civil Law, it is to be noticed that the laws on this question frequently varied: *e.g.* Valentinian III. forbade dissolution by mere mutual consent, Anastasius allowed it: Justinian repealed the permission, his nephew Justin restored it again. In the year 900 A.D., Leo the Philosopher finally revoked it.

[2] *ἀκατάγνωστος ὁ εὐλογῶν γυναῖκα παρὰ ἀνδρὸς αὐτοῦ παραχομένου τὴν αἰτίαν, ἀπολυθεῖσαν.*

αἱ παρ' ἀνδρῶν παραχομένων τὴν αἰτίαν ἀπολυθεῖσαν, εἰ γήμασθαι βουληθεῖεν καὶ αὐταὶ ἀνέγκλητοι, καὶ οἱ εὐλογοῦντες ἱερεῖς. ὁμοίως καὶ περὶ ἀνδρῶν.

ὁ τὴν ἐκβληθεῖσαν ἐπὶ μοιχείᾳ γήμας, κἂν γεγαμηκὼς κἂν ἄνταμος, μοιχός ἐστι, καὶ τῷ τῶν μοιχῶν ὑποκείσεται ἐπιτιμίῳ.

τῶν ἐκ συμφώνου ὅπερ ἀπείρηται τοῖς νόμοις τῶν γαμῶν ἀπολυσαμένων ὁ τοὺς δευτέρους γάμους εὐλογῶν ἱερεὺς τῆς ἰδίας ἐκπεσεῖται τιμῆς.—Selden, *Uxor Hebr.* iii. xxxii.

divorce, which involves the belief that adultery dissolves the marriage bond.

The separation of the Eastern and Western branches of the Church, which was consummated by the quarrel between the Patriarch Cerularius and Pope Leo IX. in 1054 A.D., removed any incentive, which the unity of the Church might have created, for a return to the primitive doctrine of the absolute indissolubility of marriage. On this question the two Churches are even more widely at variance than on that upon which they parted asunder.

Before, however, we take leave of the Orientals, it seems right to notice that the Nestorians have never admitted the right of remarriage after divorce.[1] They are commonly called "the heretical Churches," but though long severed from communion with the Mother Church, they are far from holding the doctrine attributed to Nestorius. It should be remembered to their honour that at least on one, and that a most vital question, they have been more tenacious of primitive truth than their "Orthodox" brethren.

[1] The Canon Law of the Nestorians is embodied in the *Sunhadus*, which dates back to the fourth century. The first departure from its enactments is said to have taken place in the eighth century, when a relaxing Canon was passed, but they held a Council in Persia in 804 A.D. on this subject, and upheld primitive doctrine and practice.

X.

The Churches of the West after the Fifth Century.

THERE has been far less deviation from primitive practice and doctrine in the Latin Church than in the East. This was due mainly, as we have before shown, to the comparative freedom from State interference consequent upon the removal of the seat of empire to Constantinople. It will suffice to take a rapid survey of the Church of the West for two or three centuries further before we dwell upon that of our own country, which must receive a full investigation. We select just two countries, Gaul and Italy,—Gaul, from the interest it must always have for English Churchmen, arising not only out of its proximity, but also from what we owe to the Gallican Liturgy as well as to the influence of the Norman Conquest; and Italy, for reasons that must be obvious to every one. It is satisfactory to find that in Gaul the question of remarriage was regarded as settled by the Council

The Church of Gaul.

of Arles, in which the prohibition was distinctly set forth, and the rulers of the Church were exhorted to use their utmost endeavours to prevent any breach of it. There have been, however, Synodical decrees which relaxed the original restrictions, such, for instance, as at the Council of Vannes, 465 A.D., which made concessions to the innocent husband. During the eighth and ninth centuries there was considerable agitation in Council after Council, but, almost without any variety, they upheld the principles laid down at Arles.

The Council of Vannes.

The Council of Soissons, 744 A.D., while sanctioning divorce for flagrant infidelity to the covenant, upheld the prohibition of remarriage both for husband and wife, till the death of one of them should have severed the original bond.[1]

The Council of Soissons.

The Council of Nantes, of uncertain date, but generally[2] supposed to have been subsequent to the above, justified a husband in putting away a wife detected in adultery, and obliged her to be recognised as a penitent for seven years. Provision, however, was made against such divorce being held to dissolve the bond by the liberty allowed to the husband to receive his wife back again, if he desired

The Council of Nantes.

[1] Nec marito vivente suam mulierem alius accipiat, nec mulier vivente suo viro alium accipiat.—Harduin, iii. 1934.

[2] Smith's *Dict. of Antiq.*, ii. 1113, places it as early as 658.

it, though in this case he was obliged to share her penitential discipline. The same rule held good for the wife in case the husband were the transgressor.[1]

Charlemagne's divorce of his wife and remarriage.

About the same date the time-honoured law received a severe shock through the action of Charlemagne. He had married an obscure woman, but shortly afterwards, in view of a great political alliance with Desiderius, king of the Lombards, he made no scruple of repudiating her and taking in marriage the Lombardic Princess Hermingard. His father Pepin had tried to divorce Queen Bertha, but was stopped by the earnest remonstrance of the Pope. Charlemagne would brook no opposition, and claiming the royal prerogative of being "above the law,"[2] he defied the Papal interference. It is quite possible that he might have been restrained had the Pope appealed to him simply on grounds of morality, but he saw that what the Pope was most anxious to avert was not so much a transgression of the Marriage Laws

[1] Si cujus uxor adulterium perpetravit et hoc a viro deprehensum fuerit et publicatur, dimittat uxorem, si voluerit propter fornicationem; illa vero septem annis publice pœniteat. Quod si voluerit adulteram sibi reconciliare, licentiam habeat: ita tamen ut pariter cum illa pœnitentiam agat. Similis forma et in muliere servabitur, si eam vir ejus adulteravit.—Harduin, vi. 459.

[2] The same claim was frequently set up by kings at this time. *E.g.* the Emperor Constantine divorced his wife and married another, and the justice of his claim was allowed.

as an alliance with the perfidious house of Lombardy. The Papal remonstrance was couched in the most unmeasured language, and betrayed in every sentence the Pontiff's real object: "The enmity of the Lombards to the See of Rome is implacable. Wherefore S. Peter himself solemnly adjures him, the Pope, the whole Clergy and people of Rome adjure him, by all that is awful and commanding, by the living and true God, by the tremendous Day of Judgment, not to presume to wed the daughter of Desiderius."[1] Such solemn and vigorous denunciations would have found ample vindication in a simple desire to uphold the sanctity of marriage, when a king, to whom his subjects looked for the highest example, was meditating a flagrant breach of it, but they are quite out of place where nothing more than political advantage was at stake.

The Capitulary of Charlemagne.

It really looks as though Charlemagne believed, as he boasted at the time, that he was superior to the obligations of law. He lived, however, to find out and to repent of his mistake, for towards the close of his reign he re-enacted in his Capitulary[2] the prohibitory decrees of the Councils of Carthage and Milevi.

[1] Cf. Milman's *Lat. Christianity*, lib. iv. ch. xii.

[2] This was put forth at Aix-la-Chapelle in 789 A.D., cap. xliii.

These were held to be binding on the Gallican Church a century later, for after the Synod of Toul, 860 A.D., the Archbishop of Rheims sent a rescript to the Bishop of Aquitaine denying the right of remarriage, and appealing to the authority of the African Councils aforesaid.[1]

Just about this time the Bishops of Lorraine were brought into conflict with the Pope in the matter of the king's marriage and divorce; and though they seem to have set at nought the rules of the Church, and to have incurred the anger and indignation of the Pope, yet it will be found that they safeguarded themselves by the terms in which they framed their decisions. The circumstances were these: King Lothair had married Theutberga, daughter of a powerful count of Burgundy, but repudiated her shortly afterwards, ostensibly on the ground that she had been guilty of incest before her marriage. Synod after Synod was called to discuss his right to remarry, and it was eventually decided by the third at Aix-la-Chapelle, in 862 A.D., in favour of the king's claim. The Bishops, however, distinctly stated that they had examined the evidence of Scripture, Councils, and Fathers, with the selfsame result, viz., that remarriage after divorce was illegal;

The dispute about the marriage of Lothair and Theutberga.

[1] Harduin, v. 521.

but, they said, what the king claimed was not the right of remarriage but simply of marriage, for the queen's confession of her guilt left them no alternative but to declare the union null and void *ab initio*.[1] No lawful marriage had taken place, therefore the king was free to marry as he wished. It is not necessary to follow up the history, as the decree of the Councils furnishes us with the evidence we need.

No doubt in later times adverse decisions were occasionally given, but it will suffice to have shown that for at least eight centuries the Gallican Church clung to the primitive belief in the illegality of all remarriage of divorced persons till death had removed the bar.

The Church of Rome.

We turn now to the Church of Rome. It is very difficult, however, to write separately of this, as her influence extended over so many countries, and her voice made itself heard in Synods and Capitularies throughout the West. Restricting ourselves, as far as possible, to the narrower sphere, we find abundance of Papal utterances to prove that Rome remained true to the early standard. Leo the Great has left a letter written to Nicetas, Bishop of Aquileia, in which he decided that the liberty of divorce in the Civil Code was no law to Christians;

Leo the Great—458 A.D.

[1] Cf. Hincmar, *de divortio Hlotharii et Theutbergæ.*

that, for instance, a woman whose husband had been carried into captivity was not released from the marriage tie, but remained, in the eye of the Church, the wife of the captive as long as he lived, and if he obtained his release, he was free to claim her as his own, even though she had joined herself to another.

Gregory the Great—590 A.D.

Gregory the Great, at the close of the next century, issued a decree that husbands who detect their wives in adultery are not allowed to marry others, nor may wives, under similar circumstances, marry other husbands, so long as they both shall live.[1]

Pope Zachary—750 A.D.

Pope Zachary, in the middle of the eighth century, and Stephen II., both bear similar witness to the indissolubility of the marriage tie.

The Council of Friuli—791 A.D.

A little later the Council of Friuli furnishes similar evidence, all the more valuable because it is stated that the assembled divines did not merely accept the authority of previous Conciliar decrees, but based their decision upon an independent inquiry into the meaning of our Lord's words, "Whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth

1 Qui uxores suas in adulterio deprehendunt, non licebit, nec eum nec eam aliam uxorem accipere, vel aliam virum, quamdiu ambo vivunt.—*Corp. Casi Decret.* Part II. caus. xxxii. quest. vii. 22. The authenticity has been doubted.

adultery, and whoso marrieth her which is put away committeth adultery." [1]

The following century, however, exhibits signs of wavering in Rome itself. Two Councils were held there, under Pope Eugenius II. and Leo IV., and in these, for the first time, liberty of remarriage after divorce was granted to the innocent party.[2] It is not known what circumstances induced the Church to abandon its ancient position, but there are no traces of its being of more than temporary duration. Cornelius a Lapide, in commenting on S. Paul's words, "If she depart, let her remain unmarried," [3] gives quotations from Roman writers to show how the primitive standard was upheld.

Councils at Rome—826 and 853 A.D.

The Master of the Sentences, in the twelfth century, in explaining the nature of the sacraments, shows how adultery may be followed by a physical separation of husband and wife, but the spiritual bond of wedlock remains unbroken, though those that are married may leave their own flesh, and cleave to others.[4]

Peter Lombard.

The doctrine of the Schoolmen was equally clear.

[1] S. Matt. xix. 9.

[2] Harduin, v. 69. Cf. Lea, *Remarriage after Divorce*, p. 11.

[3] 1 Cor. vii. 11.

[4] Manet enim vinculum conjugale inter eos etiamsi aliis a se discedentes adhærerint.—Quoted by Lea, *id.* 37.

S. Thomas Aquinas.

S. Thomas Aquinas wrote that adultery could not remove the obligation of the marriage bond, and neither of the married parties might enter into a new union while both were alive.[1]

Council of Florence—1439 A.D.

Council of Trent.

The same view was indorsed by the Council of Florence. At the Council of Trent, the whole question was very fully debated, and, with much temptation to relax the Catholic principles in favour of remarriage for the innocent, no concession was made. The discussion is interesting, as showing the continued divergence of East and West on this particular point. The Latin doctors, holding as they did to the permanence of the bond, drew up a Canon anathematising all who denied it; but the Venetian bishops pleaded that it would be highly impolitic, as well as unfair, to lay their malediction on a Church which had no representatives summoned to uphold its belief. Eventually the Tridentine Fathers were induced to modify the terms of condemnation, on the ground that the islands of Zanthe, Corcyra, Cyprus, Crete, and Cephalonia, all subject to the Venetian republic, were inhabited by Greeks.[2]

[1] Cum adulterium efficere non possit quia vero semper remaneat conjugium, non licet altero superstite, ratione adulterii, ad alias nuptias transire.—*Suppl. Quest.* lii. art. 5.

[2] Card. Pallavicinus, lib. 22 *Hist. Concil. Trid.* cap. 4; Van Espen, p. 607.

Instead of anathematising one who divorced an adulterous wife, and married another, they decreed that "If any one shall say that the Church errs in teaching, according to the doctrines of the Apostles and Evangelists, that the bond of matrimony cannot be dissolved on account of the adultery of either party, and that neither, not even the innocent, who has given no cause for the separation, can, while the other survives, contract a second marriage; and that adultery is committed by the husband who divorces his wife and marries another, and by the wife who divorces her husband and marries another; such an one should be accursed." [1]

This may be regarded as the mature and deliberate verdict of the Roman Church on the indissolubility of marriage.

[1] Si quis dixerit ecclesiam errare cum docuit et docet secundum Evangelicam et Apostolicam doctrinam propter adulterium alterius conjugum matrimonii vinculum non posse dissolvi; et utrumque, vel etiam innocentem qui causam adulterio non dedit, non posse, altero conjuge vivente, aliud matrimonium contrahere, mœcharique eum qui dimissa adultera aliam duxerit et eam quo dimisso adultero alii nupserit; anathema sit.—*Concil. Trid.* Sess. xxiv. can. vii.

XI.

The Anglican Branch of the Church from Anglo-Saxon times.

AFTER the Council of Arles, 314 A.D., at which the Church of this country was represented by three British Bishops, there is no record of any Conciliar decree on the question of marriage in which its voice was heard till the beginning of the Anglo-Saxon period of history. The laws of the Empire were, no doubt, in force alike for the West as the East, but we have no means of judging whether any opposition was offered by the Church, where they appeared to traverse the law of God. There is certainly no trace of any such readiness as was manifested in the East to acquiesce in a lower standard of morality, in order to avoid a conflict with the State. We have no positive evidence to rely upon; but it is a legitimate inference to draw that if the Marriage Laws had differed on this point in any way from those in force at Rome, S. Augustine

No trace of any desire to lower the standard of the Church to that of the State.

would have sought advice from home, as, indeed, he did upon two other matrimonial questions, and that full directions would have been given in S. Gregory's reply to his inquiries. The silence, then, of S. Augustine goes far to show that he found the British Church maintaining the general rule of the West, and prohibiting all remarriage of divorced persons, whether guilty or innocent; and the same prohibition was carried on into Anglo-Saxon times.

The Mission of S. Augustine.

The Penitential of Theodore has been appealed to in support of the contrary practice in the latter half of the seventh century. In the second book of this document, which purports to contain the Archbishop's decisions on questions of discipline and Church-government, the following exceedingly lax permission is found: "If any man's wife has committed fornication, he may put her away and take another; that is, if a husband has put away his wife for fornication, he is allowed to take another; she, moreover, if she has shown penitence for her sins, after five years may take another husband."[1] Now, a lax view of the

The so-called Penitential of Theodore.

[1] Si cujus uxor fornicata fuerit, licet dimittere eam et aliam accipere; hoc est, si vir dimiserat uxorem suam propter fornicationem, licitum est ut aliam accipiat uxorem; illa vero si voluerit pœnitere peccata sua, post quinque annos alium virum accipiat.—Theod. *Pœnit.* lib. ii. c. xii. § 5.

marriage tie might not unnaturally have been expected of Theodore from all his antecedents. He was born at Tarsus in the East, and had not only received his entire education at Tarsus and Athens, but had lived for sixty years or more under the influence of Eastern discipline and theology. When the Pope unexpectedly nominated him to the See of Canterbury he must have been altogether ignorant of the laws and rules of the Western Church. In a book, then, purporting to contain his judgments on a disputed question such as marriage, it might fairly have been presumed that he would be prejudiced in favour of the relaxations to which he had been accustomed. Indeed, the Pope was so afraid of his introducing the rules of the Greek Church that he actually sent Adrian, the Abbot, to keep watch over him in this country.

Its authenticity extremely doubtful.

There are, however, many and grave reasons which have led critics to doubt the authenticity of the Penitential, and to assign its composition to some unknown person.[1] Bede, who wrote so much about Theodore, makes no mention whatever of this work; yet it is almost impossible for him to have failed to notice it, had it been current in his name at the time. But two circumstances connected

[1] Cf. Haddan and Stubbs, *Councils*, vol. iii. pp. 173-4.

with this "response" on the question of marriage create the gravest suspicions; first, it is directly opposed to the directions of the former book, in which there is a judgment far more consonant with the rule of the Church: "A man who has put away his wife and united himself to another, must be a penitent for seven years, 'with tribulation,' or fifteen with lighter discipline."[1] It seems next to an impossibility that one, who had upheld the primal principle with unequivocal distinctness, could have veered round to such a vast concession as is made in the later book; secondly, it flies in the very teeth of a Canon of Hertford, and is quite inexplicable when we consider the part which Theodore took in this Council, which was held under his presidency a few years after his succession to the Primacy, on September 24th, 673 A.D.[2]

The Council of Hertford, 673 A.D.

It belongs to an important epoch in history, being, in fact, the first Council of the English Church, and therefore deserves some detailed notice. Besides the Archbishop there were present Bisi, Bishop of the East Angles, Putta of

[1] Qui dimiserit uxorem suam, alteri conjungens se, vii. annos cum tribulatione pœniteat, vel xv. levius.—*De Pœnitentia*, i. xiv.

[2] Theodore was nominated Archbishop by Pope Vitalian and consecrated in 668: he arrived at Canterbury and was enthroned in May 669.

Rochester, Leutherius of the West Saxons, Wynfrid of Mercia, and Wilfrid of Northumbria, "by his own deputies." These constituted the whole Episcopate of England at the time.[1] The Archbishop himself drew up out of the decrees of the ancient Fathers a body of Canons, and marked out ten in particular as "necessary" for their observance, and presented them to the Synod with a proposal that all would diligently undertake to observe them.[2]

The tenth Canon pronounced unmistakably against marriage after divorce: "If any man have put away his wife, united to him by lawful wedlock, if he wish to conform to the laws of a Christian, let him not be joined to another, but remain as he is, or else be reconciled to his wife."[3] These Canons, Theodore says, were fully discussed, so as to avoid any subsequent hesitation about their enforcement, and subscribed by all. It is significant, in connection with the language of the Penitential above quoted,

The influence of Theodore on the Council.

[1] The See of London was vacant. Wini had been deposed for simony, and was at this time living in seclusion as a penitent.

[2] Decem capitula quæ per loca notaveram, quia maxime nobis necessaria sciebam, illis coram ostendi, et ut hæc diligentius ab omnibus susciperentur, rogavi.—*Bed.* iv. 5.

[3] Quod si quisquam propriam expulerit conjugem legitimo sibi matrimonio conjunctam, si Christianus esse recte voluerit, nulli alteri copuletur; sed ita permaneat, aut propriæ reconcilietur conjugi.—*Ibid.*

that the penalty attached to any infringement of the Canons was a "total suspension from the exercise of all priestly functions and from all communion with the Episcopate." It is quite inconceivable that the President should have laid himself open to the penalty by giving his sentence, as he is credited with doing in the Penitential, in direct contradiction to that upon marriage.

In the light, then, of this Synodical Canon, there can hardly be a shadow of doubt that the Anglo-Saxon Church held at the beginning to the Roman rule; and all subsequent notices witness to the maintenance of it to the end.

The Excerpts of Ecgbriht.

In the Excerpts of Ecgbriht, Archbishop of York, in the middle of the eighth century, there is provision made for an Episcopal dispensation, allowing a man to marry again, if the Bishop will grant his consent, after he has been persistently deserted by his wife for five or seven years; but the Canon contains in itself the strongest proof that it was regarded as a breach both of the Law of the Church and of God, for it is added, "but let him do penance for three years, or even as long as he lives, because he is convicted of adultery by the sentence of our Lord."

It is very difficult to imagine the circumstances

under which a Bishop would have consented to go directly against the ancient Church, for it is almost immediately preceded by the old African Canon: "According to the discipline of the Gospels, neither let a wife, dismissed from her husband, take another man during the lifetime of the former, nor a husband another woman; but let them remain as they are, or be reconciled." [1]

If then individual Bishops may have been induced to yield by way of dispensation, it could have only been in rare instances; and it is satisfactory to find that the ancient Canon remained as the Church's law. There is no more notice of the subject for two centuries, when a body of laws with civil penalties was issued for the direction of the priests in Northumbria; and in this an anathema was invoked on any one in holy orders who should divorce a wife and marry again; and of a layman it was laid down, that "if any one should divorce his lawful wife and marry another, he should want God's mercy, unless he made satisfaction for it; but every one must retain his lawful wife as long as she lived, unless

Laws of the Northumbrian priests issued about 950 A.D.

[1] There is also in this collection another Canon apparently allowing remarriage, after separation through captivity, but it distinctly shows the mind of the Church by providing that if the first wife was released she resumed her position as the lawful wife. It witnesses to the indissolubility of the original tie.—Johnson's *Eng. Canons*, Part i. 740, 120, 2, 3.

they both chose to be separated with the Bishop's consent, and were willing to preserve their chastity for the future."[1]

Dunstan's Penitential, c. 963 A.D.

The same prohibition of remarriage is enforced in a collection of important Canons issued before the close of the century, probably by Archbishop Dunstan, and the penalty for transgression was so severe that the delinquent was denied all Christian rights and privileges in life and Christian burial at his death.[2]

The Council of Eanham.

At the beginning of the eleventh century, probably in 1009 A.D., King Ethelred, at the instigation of the two Archbishops, summoned a national Assembly at Eanham, composed not only of Bishops and Abbots, but also of Lay representatives. The 8th Canon drawn up by them enacted that "it should never be allowed for a Christian to marry a divorced woman . . ." or to have more wives than one, but he should be bound to her only, as long as she lived.[3] It was indorsed and promulgated afresh by King Cnute, after he ascended the throne of England, when he took counsel with his "wise men" in settlement of the Ecclesiastical Laws.[4]

Laws of King Cnute.

[1] Johnson's *English Canons*, Part i. 950, 35, 54.
[2] *Ibid.* 963, 27.
[3] *Ibid.* 1009, 8.
[4] *Ibid.* 1017, 7.

Thus, it is seen, the Anglo-Saxon period of Church history witnesses very largely to the indissolubility of marriage.

It will be found the same in that which stretches from the Norman Conquest to the Reformation.

XII.

From the Norman Conquest to the present time.

FROM the Norman Conquest to the beginning of the seventeenth century no new Ecclesiastical Laws were made on this subject. Dispensations, however, for remarriage after separation were from time to time sought and obtained from the Pope. There were two famous instances in the highest rank of life. King John had married Hadwisa, daughter of William, Earl of Gloucester, and lived with her for eleven years without any scruple on the score of consanguinity, but being captivated by the personal beauty of Isabella of Angoulême, he resolved to shelter himself under the plea of nearness of kin to obtain a divorce. The evil was aggravated by the fact that his second wife was already betrothed; but those were days when kings claimed to be a law to themselves, and a dispensation was readily granted for his adulterous union.

Dispensations granted in the twelfth century.

His example was followed not long after, in the reign of Henry III., by Simon de Montfort, who appealed to Rome to obtain a ratification for a second marriage, while his lawful wife was still living. It was in direct opposition to the Canons and Constitutions of the Church, but again the dispensation was granted.[1]

The perpetuity of the tie was witnessed to all through this period by the maintenance of a wife's right to her dower after separation for infidelity to her husband.[2]

There is one remarkable case in the reign of Edward I., which occupied the attention of Parliament in frequent debates, but no sanction was given to the plea that adultery dissolved the bond.[3]

The original meaning of divorce *a vinculo.*

To this age is assigned the original distinction between divorce *a vinculo* and divorce *a mensa et toro*; but it is not that which is popularly accepted at the present day. It lent no countenance to a dissolution of marriage. Divorce *a vinculo* was no severance of the marriage bond, but a judicial sentence declaring that, for certain reasons, such as precontract, consanguinity or other natural

[1] Morgan, *On the Law of Marriage*, ii. 218; Jebbs' *Essay*, 204.

[2] Ayliffe's *Paregon*, 239.

[3] Selden, *Uxor Hebr.* xxx.

prohibitions, the marriage had not really taken place, although the formalities had been gone through. It was what would now be called a declaration of nullity *ab initio.*

On the other hand, divorce *a mensa et toro* was also no true divorce, for it did not so disunite as to allow of remarriage; it was only "a conditional suspension of the duties of marriage," contemplating the possibility of reconciliation and the restitution of conjugal rights.

The first dangerous attempt to shake the indissoluble character of marriage was made in Henry VIII.'s reign, when a Commission, embracing bishops, divines, lawyers, and civilians, was appointed to draw up a fresh body of Canons on a large variety of questions. The result of their labours was published in Queen Elizabeth's reign, under the title of *Reformatio Legum Ecclesiasticarum*, digested under fifty-one heads, several of which dealt with marriage and divorce. It proposed to abolish divorce *a mensa et toro*, and to make it absolute in cases of adultery, desertion, continued absence, cruelty, and savage temper. Liberty of remarriage was to be granted to the innocent, but denied to the guilty.

eformatio Legum Ecclesiasticarum.

This new code of laws was only projected, never enacted; it bears witness, however, to the influence of Continental reformers, whose advocacy of greater

freedom in divorce was based on their aversion to Papal dispensations and the sacramental nature of marriage.[1] The law of the Church was allowed to remain intact, and Henry VIII., under whom the Commission had been appointed, testified clearly to the indissolubility of the tie in the "Institution of a Christian Man."

Private Acts of Parliament introduced.

A new departure was taken by the State about this time, through the introduction of private Acts of Parliament, to obtain in particular cases what the Legislature refused by its general law.[2] The control of the Church was considered to be preserved by imposing the condition that Parliament should refuse to interfere till the complainant had obtained a divorce *a mensa et toro* in an Ecclesiastical Court.

The Reformed Office for the Solemnisation of Matrimony inserted in the First Prayer-Book witnesses to the maintenance of the ancient principle in the question, "Wilt thou keep thee only unto him (unto her) so long as ye both shall live?" so

[1] Martyn Bucer and Peter Martyr were both strong advocates for greater freedom of divorce, and they were the most important foreigners in England. They left their mark, and that a very disastrous one, on the Second Prayer-Book of Edward VI.

[2] In 1552 the Marquis of Northampton obtained such an Act, which, however, was repealed under Queen Mary. This Act has been designated "the first real inroad on the indissolubility of Christian matrimony, as a principle of English law."

also in the plighting of troth, "I take thee to my wedded wife (husband) till death us do part." [1]

Towards the end of Elizabeth's reign the validity of a second marriage after divorce for adultery was tried in the Star Chamber in the case of Rye *v.* Foljambe, and it was pronounced null and void.

The same standard was maintained when James I. came to the throne, and issued the Canons of 1603 A.D. Four of these treat of divorce, but lend no sanction to a dissolution of marriage for any cause. They speak only of a declaration of nullity and divorce *a mensa et toro*; while they uphold the perpetuity of the bond by a provision that security should be taken from parties separated under the latter, that they would not enter into a fresh marriage during each other's lifetime; and that no legal separation should be allowed without sufficient caution against any neglect of this inhibition.[2]

The Canons of James the First.

[1] "Depart" in the Old English, *i.e.* separate.

[2] "In all sentences pronounced only for divorce and separation *a mensa et toro* (the only other allowed is for nullity) there shall be a caution and restraint inserted in the Act of the said sentence, that the parties so separated shall live separately, chastely, and continently, neither shall they during each other's life contract matrimony with any other person: and for the better observation of this last clause, the said sentence of divorce shall not be pronounced until the party or parties requiring the same have given good and sufficient caution and security into the Court that they will not any way break or transgress the said restraint or prohibition."—Canon 107.

No change was made in the law during the Commonwealth, though two writers, Selden and Milton, wrote strongly in favour of a relaxation. It must have been a grievous shock when Bishop Laud consented, in violation of the Law and Canons, to marry his patron, the Earl of Devonshire, to a lady who had been divorced for adultery; but he lived to rue the day; indeed, it is said that that one act became a lifelong sorrow. He made, at least practically, a public recantation of it, when he drew up the Ecclesiastical Canons for Scotland in 1635 A.D., and gave great offence to the people of that country by embodying in them a distinct prohibition of marriage after divorce.

The first attempts to relax the law at the Restoration.

It is no matter of surprise that at the Restoration, when morality had fallen so low, and respect for marriage had suffered greatly from the prevailing licentiousness, attempts were made to override the restrictions of the Church. "An Act for John Manners, called Lord Rosse, to marry again,"[2] passed the House of Lords by a narrow majority, and in time it became a precedent, and was followed by others.[3]

In 1697 A.D. Parliament went a step further; no

[1] Keble says "it drew upon their proposer the unrelenting opposition of the Kirk."—*Sequel.* 211.

[2] Cf. *supra*, p. 115.

[3] The most important was the case of the Duke of Norfolk.

action had hitherto been taken by the State until the Ecclesiastical Courts had pronounced a divorce *a mensa et toro.* The Earl of Macclesfield took a bold course, and appealed to Parliament without any previous reference to the judges of the Church, and succeeded in obtaining the dissolution of his marriage. The Act forms a new epoch, and it was not suffered to pass without a protest from certain dissenting Peers, as fraught with dangerous consequences in the future.[1] It pitted the State against the Church in open conflict, and henceforward they are found in unremitting opposition to each other, "the former striving to extend, the latter to restrict, the freedom of divorce."

The jurisdiction of the Ecclesiastical Courts first set aside.

All through the eighteenth century private Acts for divorce were multiplied in an ever increasing ratio; quite at the close of it Parliament was compelled, for the avoidance of fraud and collusion, to fall back again upon the intervention of a spiritual Court, and grant a dissolution only where the Church had pronounced for divorce *a mensa et toro.*[2] It was

[1] It is preserved in the Registers of the House, signed by Lords Halifax and Rochester.

[2] In 1798 A.D. it was made a standing order of the House of Lords (1) that the appellant should have obtained a divorce *a mensa et vinculo*; and (2) that he should attend personally at the bar to be examined, if called upon.

in some sense a recognition of her ancient jurisdiction, but accompanied by conditions of the most immoral kind. Parliament refused to take any cognisance of an appeal for dissolution until the petitioner had obtained the ecclesiastical writ of separation, but the said writ was only issued on a pledge and security that he would never marry again, so long as both the separated persons were alive. It was more than an unwilling connivance at a most flagrant breach of contract; it was a deliberate inducement and temptation to violate a bond of special stringency.

Evils and inconsistencies involved in the principle of Private Acts.

There were other evils involved in this method of procedure by Act of Parliament; it entailed a suspension of the general law of the land not for the public, but for private interests. Further, it led to class legislation, and invidious distinction and partiality of the worst kind, granting to the rich what was wholly beyond the reach of the poor.[1]

In the face of such anomalies it is almost a wonder that the practice should have been suffered to continue so long. One of two courses had become absolutely inevitable: either to facilitate divorce by

[1] Such an Act commonly cost several hundred pounds, at times as many thousands.

providing for it under an ordinary and less expensive method of legal procedure, or, learning by the experience of the past two hundred years, to revive "the grand and constant tradition" of the indissolubility of marriage which had existed from the beginning in this country.

Unfortunately the selfish purposes of man were allowed to override the Law of God, and the jurisdiction of the Church was ignored, and facilities for divorce, with liberty to marry again, were freely offered by the Legislature under a completely new order of procedure. In 1857 A.D. a special Court was established "for Divorce and Matrimonial Causes"; and it was provided that any husband might file a petition therein for his marriage to be dissolved on the ground of his wife's adultery, and that any wife might do likewise on the ground that her husband had been guilty of adultery accompanied with aggravated cruelty, or of incest or certain other unnatural crimes. Further, it enacted that after a dissolution of marriage "it should be lawful for the respective parties thereto to marry again, as if the prior marriage had been dissolved by death."

Out of consideration for the consciences of the Clergy, they were exempted from any legal obligation

to remarry a man or woman whose adultery had dissolved the former marriage, though they were compelled to grant the use of their churches for the solemnisation of the Rite by another, in case of a parishioner or any one who would have been entitled under ordinary circumstances to such privilege.

It satisfied some, but upon others it laid an intolerable burden. To those who hold the primitive doctrine, that the marriage bond is indissoluble, it is an equal sanction to a violation of God's eternal Law, to solemnise matrimony after divorce either for the guilty or the innocent, until death has dissolved the original bond. The Church does not refuse to remarry the guilty, as a penalty for his guilt, but because it cannot under any circumstances pronounce its blessings on an adulterous union. If the original tie is severed, it is severed for both; A cannot be released from B, while B is still bound to A, and to sanction the marriage of A to C, while B is forbidden to make a new contract with D, is wholly illogical. Both are free, or neither.[1] It is well that this fact should be

[1] It is strange that the Lambeth Conference, 1888, after stating emphatically that "*the sanctity of marriage as a Christian obligation implies the faithful union of one man with one woman until the union is severed by death*," should have weakened, if not

emphasised. We may feel the utmost sympathy with the injured party, but when he married his wife and she married him, they took each other "for better or for worse." We sympathise with a man, whose wife has become insane, or is imprisoned for life, but it is not accounted a hardship, that he is obliged to abide by his contract. It is difficult to separate the two cases.

almost nullified, its force, by recommending the Clergy not to refuse the sacraments or other privileges of the Church to the innocent party.—*Encyclical Letter*, p. 9, S.P.C.K. It shows, however, that the advice was not unanimous, for several of the Bishops have positively refused to issue licences for the marriage of any divorced persons. They are, however, in a minority. It is to be hoped that after the more careful sifting of evidence, which the decision of the conference led to, the refusal may become general.

XIII.

Increased Facilities for Divorce.

THE law of 1857 was most revolutionary, in so far as it introduced into England facilities for divorce hitherto wholly unknown; but it did not proceed to the lengths, which have been reached in other countries where changes in matrimonial legislation have been made. In face, however, of the progress of social and liberal views, which are inimical to restraints imposed by the Word of God, and which refuse to recognise the unique character of marriage as an ordinance of God typifying the indissoluble union between Christ and His Church, we must be prepared ere long for still further proposals, tending to regard it simply as a civil contract, based only on the mutual consent of the contracting parties, and therefore terminable on the selfsame ground.

Proposals for further changes in legislation to be anticipated.

It will be worth while, therefore, to see if we can learn anything from the experience of other

countries, which have moved more rapidly than England in relaxing their Marriage Laws.

Let us see, then, first, how the causes for the dissolution of marriage have been multiplied, and secondly, and in consequence of this multiplication, with what astounding recklessness the obligations of marriage have been repudiated.

Multiplication of causes for dissolution of marriage.

We take a few of the Continental States by way of illustration, and we find the following causes for dissolution legally sanctioned. In Austria, besides adultery, which is a common ground in all countries where divorce is granted, resting on a generally accepted though probably mistaken interpretation of Scripture, we have others for which not the slightest sanction can be drawn from the same source, such as the commission of any serious crime, wilful desertion for a year, assault endangering life or health, frequent acts of cruelty and invincible aversion on both sides, making the continuance of the tie insupportable.

In Europe.

In Germany since 1875 each State has been left to make its own laws, but in nearly all, judicial separation has been abolished by Imperial enactment, and the grounds, on which it had been previously decreed, are recognised as sufficient for absolute divorce. In Baden and Elsass-Lothringen

the laws are identical with those of Austria. In Hamburg the Imperial law has only been partially enforced. In Prussia, there are added to the above grounds for dissolution, disorderly conduct or habits of life, and refusal of maintenance and support by the husband. In Saxony habitual drunkenness is regarded as a sufficient plea.

In Denmark there is no important variation from the above, while in Sweden the causes are made to extend to extravagant and violent behaviour and incompatibility of temper.

In Switzerland the relaxation is so great that the Court may grant a judicial separation "where marriage relationships are greatly strained," and in case no reconciliation takes place within two years, they may proceed to dissolve the marriage altogether.

In Belgium even mutual consent is admitted, though not without certain restrictions, amongst which it is provided that the husband must be at least twenty-five years of age and the wife twenty-one, and they must have been married two years.

In the different States of America.

But by far the greatest licence has been allowed in America,—the country where it has been well said that "many of the problems in connection with marriage are being rapidly, painfully, and powerfully

tried out." All, therefore, who regard marriage as the chief factor in the profoundest question of social life, will turn to test the results of American experience with the gravest anxiety.

It is impossible to make any general statement on the subject, as each State determines for itself the causes for which divorce may be granted.

South Carolina has the unique distinction of refusing divorce altogether, legislative or judicial, for any cause. New York restricts it to adultery; but in the remaining States, in differing degrees of laxity, the grounds of divorce have greatly multiplied. It will suffice to mention a few of them: the discovery of ante-nuptial inchastity on the part of the wife,[1] or of notorious profligacy in the husband:[2] unnatural crimes:[3] indictment for felony and flight from justice:[4] indignities rendering life burdensome:[5] driving a wife out of doors:[6] public defamation:[7] illegal vagrancy of the husband:[8] refusal of the wife to remove with her husband from one State to another:[9] or, finally, "any other

[1] This is, we believe, the only modern country which has so far accepted the old Jewish legislation. In its simplest form, in Maryland. For habitual inchastity, in Virginia and West Virginia.

[2] West Virginia. [3] Alabama. [4] In almost all.

[5] Arkansas, Missouri, Pennsylvania, Tennessee, etc.

[6] Tennessee. [7] Louisiana.

[8] Missouri and Wyoming. [9] Tennessee.

cause deemed by the Court sufficient, and when the Court shall be satisfied that the parties can no longer live together."[1]

It would be almost impossible to proceed to greater extremities without accepting the theory that, like the common covenants and partnerships of daily life, the marriage compact depends for continuance solely on the inclination and will of those who have made it.

When we come to test the results of recent legislation in the above countries the prospect is somewhat appalling. For want of space we confine ourselves to America. Our information has been drawn from two sources: first, from a work entitled *Divorces in New England*, by Dr. Nathan Allen, who in 1880 investigated the consequences of the Divorce Acts in four States, at different periods between the years 1860 and 1880, viz., Massachusetts, Vermont, Connecticut, and Rhode Island. He calculated that the ratio of divorces to marriages was approximately as follows: in Massachusetts, 1 to 37;[2] in Vermont, 1 to 17; in Rhode Island, 1 to 12; and in Connecticut, 1 to 10.

The ratio of divorces to marriages in the United States.

Secondly, we have examined the statistics pub-

[1] Washington.

[2] We have given the figures here and in the following tables for brevity without the exact fractions.

lished on the authority of the Congress of the States in 1889.[1] Taking, by way of extract, the same four States, which the Report names with two others, the District of Columbia and Ohio, upon which most complete and reliable information has been obtained, we have these results: the ratio of divorces to marriages is, in Massachusetts, 1 to 31; in Vermont, 1 to 20; in Rhode Island,[2] 1 to 11; in Connecticut, 1 to 11.

There are some little discrepancies, but these arise from various causes which are easily accounted for. Dr. Allen points out that it is very difficult to give accurate statistics, because inhabitants of some particular States often migrate temporarily for the simple purpose of obtaining divorce in another, where the validity of the grounds on which they sue for it is more certain to be recognised. He argues again,[3] that the ratio is really often higher than that which is given, because the

[1] *A Report on Marriage and Divorce in the United States*, 1867 *to* 1886, by Carroll D. Wright, Commissioner of Labor. Revised ed., 1891. It is an octavo of over 1000 pages.

[2] The Report gives the highest ratio 1 to 10, the lowest 1 to 12, and in Connecticut 1 to 13 and 1 to 9.

[3] The writer of an Article in the *Church Quarterly*, No. xii. p. 23, objects to this mode of calculation. Whether rightly or not, we are glad to refer our readers to the Article, not only for its own value, but also for the testimony of different writers quoted in it as to the inevitable consequences of further relaxation.

marriages of those who profess the Roman Catholic Faith ought to be deducted, inasmuch as they are forbidden by the Church to seek for divorce through the Law Courts. With these and other deductions he exhibits the yet more startling results: in Massachusetts, 1 to 15; in Vermont, 1 to 13; in Rhode Island, 1 to 9; in Connecticut, 1 to 8.

Facilities for divorce have been greatly increased by a recognised laxity in connection with the legal proceedings belonging to it. Collusion between the parties is notoriously frequent. A competent authority said, "Every person who is at all familiar with the business of the Courts has observed that at least eight out of ten divorces are granted upon uncontested hearings. Many of these, it is believed, have been obtained by persons colluding with each other."[1] Cases are hurried through the Court with most reckless haste, and a decision is often based on very frivolous evidence. It has been confidently asserted that fifteen minutes is the average time spent on a divorce suit in at least one of the States.[2]

Though we give formal statistics from the United States alone, a few startling facts may be recorded

[1] Governor Andrews' *Message to the Legislature of Connecticut*, June 7, 1880.

[2] Cf. S. Dike, *Princeton Review*, 1884.

touching the consequence of relaxation in one or two of the other countries. In *Germany, Present and Past*, the author[1] has given a deplorable account of the working of the Divorce Acts. In one town of about 4000 inhabitants no less than 171 suits were pending at one time; in one Saxon village out of sixteen couples who had been married in one year, only three were living together at the end of twelve months: while in Transylvania two-thirds of the women married were divorced within a year.

The laxity of the marriage tie in Germany.

Well might it be stated before the Royal Commission, "That the state of marriage in Germany makes a German cover his face with his hands for shame."

The same writer describes a similar condition in the Protestant cantons of Switzerland, and gives the experience of a friend in Vaud, who had actually "sat down at table with a party—four gentlemen with their four wives—each of whom had been the wife of one of the other husbands. They met without the slightest restraint and as the best of friends."[2]

In Switzerland.

Now, there are two facts which we have learned

[1] Rev. S. Baring-Gould.

[2] Cf. *Marriage with a Deceased Wife's Sister*, by F. Hockin, M.A., p. 17.

in this investigation well worthy of notice, and we trust they may have weight, if ever any further relaxation is proposed in this country.

Facilities for divorce have lowered the tone of public propriety.

The first is, that this great facility for divorce has done much to break down the barrier of respectability and virtue; for when the laws came into operation at the beginning, "a strong sense of indignation against them existed in the public mind," and divorces were only sought by the most profligate, but now "the sentiments of the people have changed; divorces have become more common, and no class in society is exempt from them."[1] And what could be more significant than the unblushing shamelessness of the Swiss society referred to above? In fact the whole moral tone in regard to marriage has been lowered, and infidelity to the marriage contract has come to be regarded almost as a pardonable weakness.

They have created fresh incentives to misconduct.

The second is akin to it. It has proved a distinct incentive to sin and misconduct. It is thus stated by Dr. Allen: "It is well understood that the causes alleged are not always the *real* causes. Married parties, finding incompatibilities or disagreements of *any* kind to exist, or thinking a union with some other party would be productive of more pleasure,

[1] *Ch. Quart.*, xii. 23, fr. Dr. Allen.

soon look about to see what provision the law makes whereby a separation may be effected. Of course, they select those provisions in the law which apply most conveniently to their own case, and can be used to the best advantage. . . . Wherever one party is determined on separation, and understands the law in such cases, it is not difficult to originate causes, and is certainly easy to aggravate them. Supposing both parties are intent upon separation, they are quite willing to use the means." [1]

In England, notwithstanding the terrible revelations of the Divorce Court, there is still, we believe, an inherent shrinking from being convicted of the grosser forms of infidelity to the marriage tie, and this prevents any rapid multiplication of suits; but, if the doors are thrown more widely open by the extension of legitimate causes for divorce, sins of a less grave nature than adultery will be readily committed, to which there may be no temptation under the present restriction.

The danger of relaxation to assimilate our laws to those of the Colonies.

If any one be disposed to think that there is little prospect of England following the example of the United States and other countries in relaxing still further her Marriage Laws, we are bound to say that such a sense of security is not based on experience.

[1] Quoted in the *Ch. Quart.*, xii. 24.

Englishmen have not established any such claim to an unique possession of the power to stop the unruly passions of men exactly where they will, as to enable them to say of divorce, "Thus far, but no farther." The Colonies are beginning to cry out for relief. Victoria has already extended the grounds of divorce very largely, so as to grant it, *e.g.* for desertion, habitual drunkenness, and sentence to penal servitude.[1] When the appeal has become general, it will be repeated in the mother country. It has been so in

[1] Grounds upon which divorce may be obtained :—

(*a*) Adultery of husband or wife.

(*b*) Certain specified unnatural crimes.

(*c*) On the ground that respondent has without just cause or excuse wilfully deserted the petitioner, and without any such cause or excuse left him or her continuously so deserted during three years and upwards.

(*d*) A respondent in a suit for restitution of conjugal rights who fails to comply with the decree of the Court is deemed to have been guilty of desertion, and a divorce may be granted on the ground of desertion, although the three years have not elapsed since the failure to comply with the decree.

(*e*) On the ground that respondent has by continued habits of drunkenness during two years and upwards habitually left his wife without the means of support, or being the petitioner's wife has by such habits for a like period habitually neglected her domestic duties or rendered herself unfit to discharge them.

(*f*) On the ground that at the time of the presentation of the petition the respondent has been imprisoned for a period of not less than twelve months, and is still imprisoned under a commuted sentence for a capital

regard to the Table of Prohibited Degrees.[1] Indeed, it is one of the commonest arguments in favour of withdrawing the prohibition for marrying a deceased wife's sister, that it has been already withdrawn in the Colonies, with the Imperial sanction, and that a diversity of law in the same empire creates indefensible anomalies, and imperils that union of sentiment which ought to pervade all classes of Her Majesty's subjects.[2]

The attention of all who take the laxer view of marriage is, for the time, concentrated upon the success of legislative efforts for the removal of this restriction. If they shall ever attain their purpose, it needs no prophetic foresight to assure us that

> crime, or under a sentence for seven years or upwards for some other crime, or, being a husband, has by reason of frequent convictions for crime left his wife habitually during two years and upwards without the means of support.
>
> (*g*) On the ground that within six months previously the respondent has been convicted of having attempted to murder the petitioner, or on the ground that the respondent has repeatedly during that period assaulted and cruelly beaten the petitioner, or otherwise during a period of two years been repeatedly guilty of cruelty towards her.
>
> *Victoria Divorce Law Amendment Act*, 1889.

[1] At "The Colonial Conference" on the subject, held April 14, 1889, out of twenty-one Colonial representatives only six raised objections to ask England to change her law to meet theirs.

[2] Cf. *One Hundred Sane Reasons for Repealing the Law against Marriage with a Deceased Wife's Sister*, p. 9.

others will follow. Our truest safeguard is to try and fortify public opinion against this and similar attacks by setting forth calmly and dispassionately the scriptural, historical, and social testimony to the absolute indissolubility of the marriage bond save through the interposition of death.

APPENDIX

THERE is one subject upon which I have greatly desired to write, but from which I have naturally shrunk: the publication, however, of the York Convocation Report on the question of divorce, since the preceding pages were written, seems to justify me in calling attention to it. It is the apparent contradiction which is given to the Church's belief in the indissolubility of marriage by the issue of licences to divorced persons to remarry from Diocesan Registrars, ostensibly with the sanction of our own Bishops. There is a very common notion, arising, perhaps, out of the decisions on the subject of Divorce in the Lambeth Conference, that the standard which such writers as Keble, for instance, have maintained, is higher than that of the Episcopal Bench. Personally I have been called upon, under very critical circumstances, to meet this objection. On one occasion, at a public discussion in London which I was invited to open, I felt that a statement made and emphasised by one of the speakers in support of the laxer view, on the ground that it was taken

by some of the Bishops, went far to neutralise the force of the historical evidence produced in favour of the absolute prohibition of remarriage till the death of one of the divorced parties had severed the bond. On two other less important occasions I have been confronted by the same difficulty.

I am quite aware that, at least in some dioceses, the issue of marriage licences is believed to rest with the Diocesan Chancellor, and that the Bishops may feel their hands tied; but the extracts quoted below from the Report of the Lower House of the Northern Convocation,[1] and the comments of the chief organ of ecclesiastical opinion in the Press will, it is hoped, give them strong moral support, in any common resolution they may think fit to make, to uphold intact the historical practice of the Western Church.

The chapter of the Report which is only quoted in part is

"THE CONNIVANCE ON THE PART OF THE CHURCH OF ENGLAND IN THIS MATTER"

and is as follows:—

"We have already seen how Divorce is marching onward with ever increasing rapidity, bearing in its train those natural consequences—the disintegra-

[1] The Report is one of the most elaborate ever issued by Convocation, and should be read by any one who values carefully prepared statistics.—National Society, Sanctuary, Westminster.

tion of family life, laxity of ideas as to the marriage bond, a growing appetite for greater facilities for breaking that bond, perjury, lying collusions, and increasing temptations to unfaithful conduct. This surely means the steady lowering of the moral tone of the nation, and a drifting towards the depraved state of American morals in the matter of marriage. If England is to go forward on the path she has already commenced to tread, what will be her condition one hundred or even fifty years hence?

"Where can we look for any check to this course that the nation has thus embarked upon? Who should be the natural upholder of the morals of the country? Ought not the answer to be, 'The Church of Christ in this land'? Have we not already seen how religious societies in America blame themselves because they have made no firm stand against the prevalent laxity? Have we not seen how the Roman Church there standing alone, has firmly opposed and stamped out amongst its own members every tendency of the kind, and has thus had a marked influence for good?

"It is surely the duty of the Catholic Church of this land—

"1. Boldly and faithfully to set forth the doctrine of marriage as taught by our Lord and His Church.

"2. To strive by every means to maintain a sound and healthy public opinion on the subject.

"3. To uphold a strict discipline amongst her own members.

"4. And to remember that a Church of diminished numbers, yet of pure life, is more loyal to Christ, and doing more good in the nation, than a Church which lowers her moral standard to meet the lowered moral standard of the world.

"We maintain that the Church of England is guilty of connivance in this matter of divorce—

"1. *As regards the issue of marriage licences from the Diocesan Registries*, which, *primâ facie*, are 'voluntary faculties' granted by the Bishop.

"The practice varies greatly.

"Out of the thirty-four dioceses of England and Wales—

"(*a*) Six only (Chester, Chichester, Ely, Lichfield, Norwich, and Salisbury) refuse to issue licences to any divorced person whatsoever.

"(*b*) Fifteen and a half (St. Albans, Bath and Wells, Canterbury, Durham, Exeter, the ancient Diocese of Bristol, Hereford, Llandaff, Lincoln, Liverpool, Manchester, Newcastle, Peterborough, Rochester, Truro, Winchester) grant the Bishop's faculty for a fresh union to the successful petitioner or plaintiff in a divorce suit.

"(*c*) Whilst eleven and a half (St. Asaph, Ban-

gor, Carlisle, St. David's, Gloucester, London,[1] Oxford, Ripon, Southwell, Wakefield, Worcester, York) make no rule against the issue of licences to either party. Some leave it to the surrogates to do as they please, some merely order the surrogates to be sure that a certified copy of the decree absolute is filed whichever party applies, so as to make it

[1] The Chancellor of the Diocese of London issues licences in his own name as Chancellor of the Bishop, after hearing the convicted defendant on oath in chambers with increased fee. His jurisdiction is said to be independent of the Bishop, the authority to grant marriage licences having been delegated by the Bishops of London to their Chancellors by their letters patent for centuries; and it is said to have been held at common law that such being the case the Chancellor is bound to sit as an independent judge. It is said that he is bound by the practice of his court since 1857. It is said that Sir James Deane and Lord Penzance have both declared that the Chancellor was bound to issue the licence. There is an appeal from the Chancellor to the Arches, and from these to the Judicial Committee, as well as power to apply for a mandamus.

The Bishop of London stated in Convocation that the Bishops could not interfere with the licences which are granted by their courts, from which there lies an appeal to higher courts. But the Bishop of Ely read the opinion of the Vicar-General, Sir Travers Twiss, as follows:—Bishop of Chichester: "Can the Bishop say, I forbid my chancellor to grant the licence? In any such case, would that be a legal act?" The Vicar-General: "I consider that it is within the power of a Bishop to do so." The Bishop of Winchester: "Then your judgment is that a Bishop has power to refuse to issue a licence, as the licence is in the nature of a favour?" The Vicar-General: "Yes." But the Bishop of London replied that the question there did not go far enough; for there was an appeal, and he might be compelled to issue it afterwards.—See *Chron. of Convocation of Canterbury*, Feb. 19, 1892, pp. 109, 110.

At the same time 20 and 21 Vic. c. 85, sec. 2, says: "All jurisdiction now exercisable by any Ecclesiastical Court in England" (as regards matrimonial causes) "shall cease, except so far as

clear that the decree was not one merely for judicial separation. Thus in eleven and a half dioceses the Bishop's faculty for a fresh union is supplied to the convicted adulterer as well as to the successful petitioner.

"Is not this granting of licences to any divorced person whatsoever a distinct connivance on the part of the Church of England in the matter of these

relates to the granting of marriage licences, which *may* be granted as if this Act had not been passed."

As licences were not granted to persons who had obtained an Act of Parliament divorce previous to 1857, there does not appear to be anything in the Divorce Acts to compel their issue now.

The Bishop of Winchester, in continuation of the above interview with Sir Travers Twiss, said: "What does the ordinary law of licence rest upon? Is it custom or Act of Parliament?" The Vicar-General: "On the Canon Law. There is no Act of Parliament interfering with the discretion of the Bishops." The Bishop of Winchester: "Then there can be no doubt it rests in the discretion of the Bishop to grant or refuse it. The Canon Law allows the privilege in certain cases of substituting licences for banns, and no Act of Parliament does more than limit the power."—*Report of Convocation of Canterbury, Lower House*, 1891, *by Committee on Licences for Marriage of Divorced Persons*, No. 256, p. 4.

The Report also says :—

1. No change made in Ecclesiastical Courts as to granting licences by Act of 1857.
2. Canon 101 seems to imply discretion, and 25 Hen. VIII. c. 21 does not require the Archbishop of Canterbury to issue to all applicants.
3. The term in the affidavit is "prayed for a licence."
4. Licences issued are now regulated by practice of Ecclesiastical Courts before 1857. As those Courts did not allow the marriage of divorced persons, these Courts have no discretion now to grant such licences.

adulterous unions? Is not this action of the chief ministers of the Church a clear contravention of the canons and laws of the Church? Is it not in plain contravention of our ordination vows when we swore to 'minister the discipline of Christ as the Lord hath commanded us, and as this Church and realm hath received the same?'[1] Is not this licence granted by the chief representatives of the Master in plain opposition to the commands of the Master Himself, Who said: 'Whosoever shall put away his wife and marry another committeth adultery against her; and if a woman shall put away her husband, and be married to another, she committeth adultery' (S. Mark x. 11, 12)? Is it not also throwing fresh difficulty in the path of a conscientious parish priest, who finds a divorced person demanding from him the Church's blessing on the union for which he holds the Bishop's licence?

"It has, of course, nothing to do with the principle of the thing to urge that the returns show only a comparatively small number thus entering into fresh

[1] As Mr. Keble says: "It is at the Church's own peril, and especially is it at the peril of those who are ordained and sworn to be the ministers of her discipline. It is at the peril of the priests, and of the Bishops especially, whether or no they will maintain the law of the indissolubility of marriage, which in our ordination as priests we all swore to maintain. I say, with all deference, but quite advisedly, we *swore* to maintain it: for that indissolubility, as taught in the Prayer-Book, and provided for in the canons, is as much as anything else part of 'the discipline of Christ,' as this Church and realm hath received the same."—Keble, *Sequel*, p. 216.

unions. The returns are only returns of those who have openly avowed themselves divorced people: what the parish priests moreover may be doing throughout the country in the way of marrying such persons after banns we have no possibility of knowing. But we may note that, taking the year 1892, the last year of the Registrar-General's returns, the issue of such licences in London alone (from the London Registry and the Archbishop of Canterbury's offices at Doctors Commons) amounted to fifty, that is, more than one-fourth of the marriages of divorced persons as recorded in the Registrar-General's table for that year.

"2. *In allowing the use of her churches and services for such unions.*—Is it faithful to Christ on the part of the Church of England to sit down quietly under the injustice and oppression inflicted upon her by the Act of 1857—an injustice and oppression which neither Protestant dissenters nor Romanists would tolerate for a moment; an injustice and oppression which scandalises the flock, desecrates God's house, and turns one of her most solemn services into a farce and a blasphemy?[1] Is it not so?

[1] Not only are the clergy by civil law compelled to pronounce over a successful plaintiff, divorced on his or her own petition, in solemn farce the mocking words, "Those whom God hath joined together let no man put asunder," and also make them promise before God and His Church that they take one another "for better for worse, for richer for poorer, till death us do part," another—possibly several others being yet alive to whom one or both of the parties have already as solemnly promised the same thing; but

"3. There comes the further question of *the admission* of persons who have entered into such unions *to Holy Communion.* Can that Church which issues licences to and blesses the union of the convicted defendant, to say nothing of the successful plaintiff, refuse either consistently or logically to admit them to Communion? In what way, we ask, does she show her disapproval of this sin, or disavow it? In what way does she punish those who commit it, or cut them off till they show repentance with amendment of life? Can it not be honestly and truly said that she connives at, condones, and even encourages on every side both the divorce and the adulterous entry into the fresh union?"

I have obtained leave from the editor of *The Guardian* to append to the above a portion of a leading article which appeared in its columns almost immediately after the publication of the Report. It expresses what is felt very strongly by many clergy, and by not a few of the laity who

even must thus blasphemously implore Almighty God, "Who knitting man and woman together didst teach that it should never be lawful to put asunder those whom Thou by matrimony hadst made one," "Who hast consecrated the state of matrimony to such an excellent mystery that in it is signified and represented the spiritual marriage and unity betwixt Christ and His Church," "To bless them both, that they may please Him both in body and soul, and live together in holy love unto their lives' end."

have interested themselves in this important question; and is as follows:—

"It is a very serious aggravation of the mischief that the Divorce Act has compromised the Church. Nothing, indeed, can be more clear and certain than the law of the Church of England. She has always consistently maintained, as the office for Holy Matrimony emphatically lays it down, that death alone can dissolve a true marriage. Yet the Act of 1857, whilst it releases any individual priest from the obligation to officiate in case of a person divorced for adultery, gives him no such exemption in the case of the 'innocent party.' Although the law of the Church expressly forbids a priest to accord the nuptial benediction whilst the guilty party, though separated, is still living, the state law will try to force him so to do. And what seems even more humiliating, if he himself refuse to pronounce what in such a case are 'mocking words,' 'those whom God hath joined let not man put asunder,' the Act of Parliament orders that, in the forcible words of the Report, 'he shall hand over his church to be desecrated, and his parishioners to be scandalised, by the blasphemous performance of this farce by some other minister hired for a guinea or two, if any base enough to perform it can be found.' Truly the injustice and oppression of these enactments are such as we ought not to endure. If left unrepealed they

are certain eventually to lead—nay, they ought to lead—to most serious conflicts between Church and State, between the civil and the ecclesiastical law. They have been little noticed so far, because the cases which they cover have been few. But with the rapid increase of divorce amongst us, this is not likely to be so in future. Nor is there anything unreasonable in itself in demanding a repeal of these obnoxious provisions. Those who are content to be absolved from their marriage vows by mere state intervention may surely be contented with a merely legal union, and should resort to the registrar's office.

"But the report furnishes a still more startling series of statements to which we must invite attention. It is apparently the fact, lamentable and scandalous as we deem it, that in eleven of our dioceses, or if we count the not yet separated diocese of Gloucester, in twelve of them there is absolutely no rule made against the issue of marriage licences even to convicted adulterers! In sixteen other dioceses, reckoning Bristol as one of them, such licences are granted only to the successful petitioner in a divorce suit. It has, no doubt, been asserted that the Chancellors are bound to issue these faculties to any person legally entitled to marry, but the report before us argues with great force that this is not so. A marriage licence is in the nature of a privilege or dispensation, hardly is it a thing that can be claimed

as a right. Before the Act of 1857 licences were not issued to persons divorced by Act of Parliament, and that Act of 1857 retains intact the jurisdiction of the ecclesiastical courts as regards the granting of these licences. Moreover, there are six of our dioceses—let their names be mentioned with honour—Chester, Chichester, Ely, Lichfield, Norwich, and Salisbury—which refuse absolutely to give the Bishop's authorisation for a fresh union to any divorced persons whatsoever. And indeed, if the demand for a marriage licence be a legal right, the sixteen dioceses which withhold it from the divorced adulterer are acting no less illegally than those six which refuse it to all divorced persons indiscriminately. The adulterer or adulteress, when once final sentence of divorce is pronounced, is at law as free to marry as is the person against whom he or she has sinned. It seems obvious that in practice the grant of a marriage licence is not compulsory at all, and we will add that if it were not so that would be only another particular in which an amendment of the law must be demanded. It must also be said, with all due respect, but with deep regret, that our Bishops ought long ago to have formed and acted upon a consistent and uniform policy as regards this and other difficulties arising under the legislation of 1857. What six Bishops have dared to do the remainder might have ventured to do. That difficulties must arise when the law of the state revolted

from the law of God and the Church, with which for many centuries it had been co-ordinate, can hardly not have been foreseen. Vigorous protest and authoritative guidance are what might have been expected from our leaders. At present we have neither the one nor the other. Indeed, when an adulterous pair, united in church under a faculty from the Bishop of the diocese, demand to be communicated, can a parish priest consistently and logically repel them? There is too much reason in the language of the Report when it asks whether the Church of England does not 'connive at, condone, and even encourage both the divorce and the adulterous entry into the fresh union.'"

PART II

THE HISTORY OF MARRIAGE JEWISH AND CHRISTIAN, IN RELATION TO CERTAIN FORBIDDEN DEGREES

I.

The Marriage Laws of the Jews.

If, as we have aimed at showing in the preceding pages, marriage enters into "the very web and fabric" of all social morality, it becomes a matter of vital importance that we should be able to decide not only whether it is dissoluble or indissoluble, but also within what degrees of relationship it may be lawfully contracted. It is being urged in an age of growing laxity and impatience of restraint that we should be left in such a matter to the guidance of natural instinct; but though the teachings of Nature and Revelation are found to be frequently in harmony, yet it cannot be denied that there are unions, confessedly disallowed by Scripture, which would not naturally be repugnant to a people living in ignorance of what God had revealed at the institution of the Marriage Rite. The recognition of that oneness of flesh, which He declared to be established between man and wife, stamps as incestuous connections which an uninstructed instinct would not

Growing impatience of restraint in regard to marriage.

Natural instinct not a safe guide to follow.

regard in the same light. To go back to antiquity, the Egyptians and Persians had no scruple in sanctioning marriage between brothers and sisters, and even such legislators as Solon and Lycurgus interposed no barrier to a man's union with his half-sister. In her best estate, however, Nature has been found strict in prohibiting consanguineous marriages; and those who are trying to revolutionise our Marriage Laws, plead that restrictions should be so limited; but inasmuch as the teaching of Scripture positively forbids any such limitation, by placing certain relationships of affinity within the circle of prohibition, we could only accept the proposed change at the risk of relapsing into a lower condition of heathen morality.

All Christian history witnesses to the obligation of the Levitical Code of Marriage.

The Church of Christ has from the first taken the Levitical Code of Marriage as her guide, and held it to be absolutely binding upon Christians. Men have objected again and again that it is only part of the ceremonial or civil law, in view of confining its obligation to the Jews, but the language of the preface by which the legislation was introduced, when read in connection with God's declaration at the close, precludes all possibility of such restriction.

The chapter in which the main provisions are

embodied concludes with the severest condemnation of certain heathen nations for having adopted licentious unions and "abominable customs," which God had proscribed in the preceding verses, threatening the direst penalties, if the Israelites should "defile the land" by committing any of them. It goes without saying that they could not be an abomination for the heathen and yet permissible among Christians. The Levitical Law of Marriage touched not only the civil but the moral life of the Jews, and is binding upon us, as it was upon them. There may be in it a "local element," some exceptional provision or provisions of narrower application, but in its main fundamental principles it is all-embracing. History testifies that this was the intention of the Divine Lawgiver, for it is found to have shaped the legislation of all those nations which have drawn their religion from Him, Who came, as He said, "not to destroy the law, but to fulfil it."[1]

God's language refers to heathen nations as well as the Jews.

The Levitical Code of Marriage is embodied in three passages; the first and most distinct is found in the eighteenth chapter of Leviticus, and is as follows:—

"1. And the LORD spake unto Moses, saying,

[1] S. Matt. v. 17.

mar-
e code
s main
visions.

Speak unto the children of Israel, and say unto them, I am the LORD your God. 3. After the doings of the land of Egypt, wherein ye dwelt, shall ye not do: and after the doings of the land of Canaan, whither I bring you, shall ye not do; neither shall ye walk in their ordinances. . . . 6. None of you shall approach to any that is near of kin to him, to uncover their nakedness: I am the LORD. 7. The nakedness of thy father, or the nakedness of thy mother, shalt thou not uncover: she is thy mother; thou shalt not uncover her nakedness. 8. The nakedness of thy father's wife shalt thou not uncover: it is thy father's nakedness. 9. The nakedness of thy sister, the daughter of thy father, or daughter of thy mother, whether she be born at home, or born abroad, even their nakedness thou shalt not uncover. 10. The nakedness of thy son's daughter, or of thy daughter's daughter, even their nakedness thou shalt not uncover: for theirs is thine own nakedness. 11. The nakedness of thy father's daughter, begotten of thy father, she is thy sister, thou shalt not uncover her nakedness. 12. Thou shalt not uncover the nakedness of thy father's sister: she is thy father's near kinswoman. 13. Thou shalt not uncover the nakedness of thy mother's sister: for she is thy mother's near kins-

woman. 14. Thou shalt not uncover the nakedness of thy father's brother, thou shalt not approach to his wife: she is thine aunt.[1] 15. Thou shalt not uncover the nakedness of thy daughter-in-law: she is thy son's wife; thou shalt not uncover her nakedness. 16. Thou shalt not uncover the nakedness of thy brother's wife: it is thy brother's nakedness. 17. Thou shalt not uncover the nakedness of a woman and her daughter, neither shalt thou take her son's daughter, or her daughter's daughter, to uncover her nakedness; for they are her near kinswomen: it is wickedness. 18. Neither shalt thou take a wife to her sister, to vex her, to uncover her nakedness, besides the other in her lifetime. . . . 24. Defile not ye yourselves in any of these things: for in all these the nations are defiled which I cast out before you: 25. and the land is defiled: therefore I do visit the iniquity thereof upon it, and the land itself vomiteth out her inhabitants. 26. Ye shall therefore keep My statutes and My judgments, and shall not commit any of these abominations; neither any of your own nation, nor any stranger that sojourneth among you; . . . 28. that the land spue not you out also, when ye defile it, as it spued

[1] Observe how the relationship by marriage is made identical with that by blood: not thine aunt-in-law, but thine aunt.

out the nations that were before you. 29. For whosoever shall commit any of these abominations, even the souls that commit them shall be cut off from among their people. 30. Therefore ye shall keep Mine ordinance, that ye commit not any of these abominable customs, which were committed before you, and that ye defile not yourselves therein: I am the LORD."

There is again confirmation of portions of the above in the twentieth chapter of the same book:

"11. And the man that lieth with his father's wife hath uncovered his father's nakedness: both of them shall surely be put to death; their blood shall be upon them. 12. And if a man lie with his daughter-in-law, both of them shall surely be put to death: they have wrought confusion; their blood shall be upon them. . . . 14. And if a man take a wife and her mother, it is wickedness: they shall be burnt with fire, both he and they; that there be no wickedness among you. . . . 17. And if a man shall take his sister, his father's daughter, or his mother's daughter, and see her nakedness; . . . it is a wicked thing. . . . 19. And thou shalt not uncover the nakedness of thy mother's sister, nor of thy father's sister: for he uncovereth his near kin: they shall bear their iniquity. 20. And if a man shall lie

Further confirmation of a portion of the above.

with his uncle's wife, he hath uncovered his uncle's nakedness: they shall bear their sin; they shall die childless. 21. And if a man shall take his brother's wife, it is an unclean thing: he hath uncovered his brother's nakedness: they shall die childless."

We find, moreover, references to some of the enactments in the curses which were pronounced upon Mount Ebal[1]: "Cursed be he that lieth with his father's wife; because he uncovereth his father's skirt. Cursed be he that lieth with his sister, the daughter of his father, or the daughter of his mother. Cursed be he that lieth with his mother-in-law." [2]

Unions pronounced accursed on Mount Ebal.

A careful study of this legislation reveals abundant evidence that it is based upon simple and consistent principles; and we are enabled to trace

[1] There is much dispute about the right rendering of the Hebrew term חֹתֶנֶת as it is used in various ways in the Old Testament. There is a rendering in the oldest MS. of the LXX., τῆς ἀδελφῆς τῆς γυναικὸς αὐτοῦ, his wife's sister, but its genuineness is doubted. It cannot be denied, however, that the masculine form of the noun is used of Hobab to express his relationship to Moses; he was not, as the Authorised Version translates, "father-in-law," but, as is clear from Numb. x. 29, son of his father-in-law, *i.e.* Zipporah's brother, and consequently Moses' brother-in-law. On this analogy the feminine in Deut. xxvii. would be sister-in-law. The Vatican MS. above mentioned belongs to the fourth century A.D. Whether, therefore, the rendering be genuine or not, it at least witnesses to an ancient belief in the invalidity of such a marriage.

[2] Deut. xxvii. 20, 22, 23.

Three leading principles manifested in the Code.

in clear outline these three leading ideas: First, that for purposes of marriage no distinction is drawn between relations by blood and relations by affinity. Inasmuch as man and wife become by marriage "one flesh," a man is forbidden to marry any relation of his wife's family in the same degree of relationship as he is forbidden to marry in his own family. It was well expressed in the Westminster Confession: "The man may not marry any of his wife's kindred nearer in blood than he may of his own, nor the woman of her husband's kindred nearer in blood than of her own."[2] This establishes one clear and intelligible principle.

The identity of consanguinity and affinity for purposes of marriage.

Secondly, we find on examination that the limit of prohibitions is drawn at the third degree of relationship. This may best be explained by an example or two. A man is forbidden to marry his aunt, but is not forbidden to marry his cousin. The mode of reckoning is obvious in the direct ascending or descending line: thus from a man to his mother is one degree, to his grandmother is two degrees, and so on. In the case of collateral relations it is less obvious, but not less intelligible. The degrees are counted to and from the common ancestor, in whom the blood of the relations unites; thus in the

No prohibition beyond the third degree.

[1] Chap. xxiv. sec. 4.

former case of the aunt, from the nephew to his father is one degree, to his grandfather, the common ancestor, is two degrees, from the grandfather to his daughter, *i.e.* the aunt, is three degrees. It is within the proscribed circle, and marriage is illegal. If we extend this one degree further to the aunt's child, we come to the first cousin, but the relationship here is of the fourth degree; and as there is no single instance in the schedule of Levitical prohibitions beyond the third degree, marriage with a first cousin is allowed.[1]

The list of written prohibitions not intended to be exhaustive.

Thirdly, we conclude that the list of prohibitions enumerated in the Code is not meant to be considered as exhaustive, but that certain other relationships are necessarily inferred by analogy and parity of reasoning—that is, that the converse of any stated case or cases where the relationship is exactly identical, must be taken for granted. It is written in so many words that a man may not marry his mother; it follows of necessity, but is not expressed, that a woman may not marry her father. Again, a man is forbidden to marry his brother's widow—in other words, two brothers may not marry the same woman. It seems quite illogical to claim that two

[1] It will be shown later how far this particular permission has been curtailed. Chap. viii., pp. 281-3.

sisters are at liberty to marry the same man—*i.e.* that a man may marry his deceased wife's sister. Once more, a nephew is prohibited from marrying his aunt, therefore we conclude that there is the same bar to the marriage of a niece with her uncle.

Such are the main conclusions which an unbiassed reader would naturally draw from an examination of all that Moses laid down on the subject of marriage in these passages. There are, however, numerous considerations which require to be frankly and fully dealt with, before we are justified in saying that they admit of no modification. For instance, the Jews assert that the list of prohibitions does not embrace that of a wife's sister, and they reject the interpretation of the law "by analogy or parity of reasoning," and argue that a niece may marry her uncle, though a nephew is forbidden to marry his aunt. In both cases they appeal to history, and point to what they assert to be the immemorial custom of their race. In regard to the latter their argument is merely a negative one: no prohibitive enactment is found in the law; but in the former they appeal to legislative sanction based upon inevitable inference: "Neither shalt thou take a wife to her sister, to vex her, to uncover her

Some of the above conclusions disputed by Jews.

nakedness, in her lifetime." After her death, they conclude that the prohibition is removed.

We are bound to say that much harm to the Christian cause seems to have been done by the line which not a few controversialists have taken up. Fearing lest any recognition of the Jewish claim would destroy the Christian's objection to the marriage, they have used wholly unworthy arguments to overthrow the Jewish interpretation. It would have made our position infinitely stronger if we had frankly accepted the almost unanimous verdict of Hebrew scholars upon the meaning of the verse; for it by no means follows that a particular enactment, contrary to the general spirit of the law, is of permanent obligation. It may have been part of that concessive legislation which Moses allowed upon special reasons, intended to be withdrawn when such reasons ceased to be alleged.

Injury done by attempts to explain away a generally admitted fact.

Such is the line of interpretation which, I believe, places the Christian Law of Marriage upon unassailable ground.

II.

A Critical Examination of a much-vexed Clause.

The significance of the term "near of kin."

THE key-note of the whole legislation is struck in verse 6 of Leviticus xviii.: "None of you shall approach to any that is near of kin to him to uncover their nakedness." "Near of kin"[1] is an interpretation, not a translation of the Hebrew expression. The marginal reading is "*remainder* of his flesh," but this is based on a false etymology, and the best Lexicographers render it "*flesh* of his flesh," which is far more expressive. It is so rendered in other places, as, *e.g.* "My flesh and my heart faileth." "Can he provide flesh for his people?" "He rained flesh also upon them."[2]

Now by the examples which Moses proceeds to bring forward he shows that it was intended to embrace near relations of two kinds, either by

[1] Lev. xviii. 6 : אִישׁ אִישׁ אֶל כָּל־שְׁאֵר בְּשָׂרוֹ לֹא תִקְרְבוּ

[2] Cf. Ps. lxxiii. 26 and lxxviii. 20, 27.

consanguinity, when the sameness of flesh and blood is derived through natural procreation, or by affinity, when through marriage there is the same identity by virtue of the Divine decree pronounced at the institution of the ordinance: "Therefore shall a man leave his father and his mother, and shall cleave unto his wife: and they shall be one flesh."[1]

The equality of ties of blood and marriage.

Now, that the ties of consanguinity and affinity, in their connection with the rights of marriage, are treated in the Levitical Code as equally binding, is evidenced by the illustrations given, which impose, if anything, even more restrictions in regard to the latter than to the former. From these we single out two or three which appertain to the particular case we have more especially to consider, viz., marriage with a wife's sister. The legislator forbids marriage with a wife's daughter, *i.e.* stepdaughter, or her daughter's daughter, *i.e.* stepgranddaughter, on the express ground that they are her "near kinswomen," or literally "her flesh": so also with a mother's sister, because she is the "mother's flesh." The wife's sister seems to be no farther off, and she is certainly as much her near kinswoman or "her flesh," as the mother's sister

[1] Gen. ii. 24.

is the mother's "flesh." If "it is wickedness" to marry in the one case, why not in the other?

Now a general view of the schedule of prohibitions leaves on the mind the impression that a man may not marry one of his wife's blood-relations whom he might not marry if she were his own; and there is little doubt that had the directions ceased at the end of the seventeenth verse, no dispute would ever have arisen. But what follows, "Neither shalt thou take a wife to her sister, to vex her, to uncover her nakedness, beside the other in her lifetime":[1] is interpreted by Jews as admitting an exception to the aforesaid general principle; and they have acted upon it by removing the bar to union with a wife's sister, which would naturally be imposed by the analogy of other restrictions. Whether the language is patient or not of another interpretation may be disputed; but the Jews unquestionably have a *prima facie* justification for the meaning which they have put upon it. If we had come to the verse with an independent judgment, unfettered by contradictory inferences, we should certainly not have imagined that it contained any other prohibition than that of being married to two

The natural meaning of Leviticus xviii. 18.

[1] וְאִשָּׁה אֶל אֲחֹתָהּ לֹא תִקַּח לִצְרֹר לְגַלּוֹת עֶרְוָתָהּ עָלֶיהָ בְּחַיֶּיהָ׃

sisters simultaneously. And so the great majority of the Jews have accepted it.

The late Lord Hatherley quoted two cases from the Mishnah, which appear to contradict this. "A, B, and C (three brothers) marry respectively M and N (two sisters) and S, a stranger. A dies, and C marries the widow M; then N dies and also C, who leaves behind him S and M; then B may marry S the stranger, but not M, because she was the sister to his former deceased wife N." The second case is almost identical. But though it is said, "brothers" here as elsewhere in the Mishnah probably means "kinsmen"; if it does not, the examples are not pertinent; for marriage with a brother's widow was forbidden in the Law.[1]

Apparently contradictory evidence.

Maimonides said expressly that the marriage of a man with his wife's sister and that of a woman with her husband's brother were analogous cases, and forbidden on the same ground, viz., nearness of kinship.[2]

The evidence, however, most relied upon is that

[1] This is cited in "Philadelphus," note 11. We have not been able to verify it.

[2] Quoted by Dr. Townley from the *More Nevochim*, and referred to by Lord Hatherley, *Speech in Willis' Rooms*, Feb. 1, 1860. Moses Maimonides was held so high in the estimation of his fellows that they used to say of him, "From Moses to Moses there was none like Moses," but as he did not live till the twelfth century his testimony is of less value.

The evidence of the Karaite Jews.

of the Karaite[1] Rabbis. The sect arose at Bagdad in the eighth century out of a dispute in the Rabbinical Schools at Sura respecting the claims of one Anan to a particular office as teacher; he was believed to undervalue the authority of tradition and to place the Talmud before the Scriptures. On his rejection by the Gaonim he migrated to Jerusalem and gathered round him a considerable school, which subsequently spread to Egypt, Turkey, and Russia; but they never attained much celebrity, and have lately dwindled to very small dimensions. They expressed very decided views on questions of marriage, and maintained that there was never any exception made in regard to the laws of affinity as distinct from those of consanguinity, and the interpretation which they put upon Leviticus xviii. 18 was a simple prohibition of polygamy.

The witness of the Kur'an.

One more fact in favour of this interpretation, though only inferential, deserves to be noticed. The marriage of two sisters is forbidden in the Kur'an, and it is well known that Mahomet endeavoured, as far as possible, to base his legislation on that of the Jews.

[1] Their name was derived from קרא to read, and so they were called "readers," *i.e.* Scripturarii, men who read the written law rather than accepted "oral tradition.'

We have stated all that we can gather from Jewish sources on this side, but we are bound to say that it is completely eclipsed by overwhelming evidence on the other side. It would not be difficult to draw out a list of authorities, but it will suffice, perhaps, to quote the evidence of the Chief Rabbi Adler. "All the Rabbis," he says, "and here we are on ground of historical Judaism, concur in this view of the question; for in examining their opinions from the Mishnah (*Yebamoth* iv. 13) downwards to the Shulchan Aruch, Eben Ezer (sect. 15, § 26) we find that they prohibit marriage with a woman after the divorce of her sister, but expressly permit it after her death, . . . so that, to the best of my knowledge, not a single opinion can be met with throughout all the Rabbinical writings which would even appear to throw any doubt upon the legality or propriety of the marriage of a widower with his deceased wife's sister."[1]

The opinion of the late Chief Rabbi.

It may be urged that as there is no contemporary evidence to show how the law was understood in the days of Moses, it is competent for us to stamp

[1] Appendix No. 35 Royal Com. Report, 1856. He evidently was not familiar with the opinion given by Maimonides. He would ignore the Karaites upon principle.

Michaelis examined the evidence in detail, both in *Abhandlung von den Ehegesetzen Mosis* and in *Mosaisches Recht*, and his conclusions have been generally accepted.

Is the present Jewish interpretation of late origin?

even so general a belief, as this is said to have become, as one of the numerous departures, taken by later Jews, from the Mosaic Code. They departed, as we have shown, to a grievous extent in the somewhat kindred subject of divorce; it may be asked, why not also in this? There seems to us to be a clear distinction between the two cases; in that case, the letter of the law was against them; in this, it is, in the judgment of scholars, in their favour.

Let us proceed to analyse the verse; it has been said, it is true, to bristle with difficulties, but not a few of them have been created only by the exigencies of controversy; literally translated, it would read, "and thou shalt not take a woman[1] to her sister to bind them together, to uncover her nakedness, beside (or in addition to) her in her lifetime." The question whether "a woman to her sister" is to be taken literally, or only as a figure, will be considered in full hereafter.[2]

The only real difficulty lies in the expression "*ltseror*," which will bear at least three meanings: first, it may be simply to pack or bind together,

[1] The Hebrew אִשָּׁה is used indifferently for a woman or a wife, just as in Latin *vir* is for a man or a husband.

[2] Chap. iii. p. 235.

which is the primary sense of the root; it is found in two derived nouns, *tseror*, a packet or bundle, something tied together; or *tsar*, distress, straits, a state in which things are so closely pressed together that there is no room to move. It would imply, then, in this passage a simple prohibition against having two sisters united together simultaneously as wives; admitting polygamy, but interposing this one limitation.

Secondly, it may mean, as in the Authorised Version, to vex or distress—a sense of the word preferred by the translators in order to account for the prohibition. It has been asked why two sisters should be more jealous of or likely to vex each other under the circumstances than any other two women? It is quite intelligible that the lawgivers should regard the vexation as more to be deprecated in one case than in the other; for it is easy to understand that it would be a grievous aggravation of the evil, if it sprang up and divided those whom nature had united in the closest bonds of sisterly affection. If we interpret the expression in this sense, it would seem almost certain that Moses was prompted to use it by the recollection of the enmity and jealousy fostered in the family of Jacob by the concurrent marriage with Leah and Rachel.

But there is yet a third sense in which it may have been used, viz., as a technical term in polygamous life, to take as a fellow-wife, or secondary wife;[1] and as such it has the support of the Arabic and Aramaic languages,[2] and the Greek and Latin versions.[3]

The significance of "in her lifetime."

Another expression in the passage, which has been much controverted, is the meaning of "in her lifetime." It has been again and again maintained that the introduction of this limitation by no means carries with it an implied permission after her death; that "a thing denied with special circumstance does not import an opposite affirmation when once that circumstance is expired."[4] Thus the late Bishop of Lincoln wrote:[5] "When Samuel had uttered a stern prophecy against Saul, we read that he came no more to see him *until the day of his death* (1 Sam. xv. 35). But are we, therefore, to

[1] Cf. *Mishn. Yebamoth* i. 1.

[2] With the interchange of two letters, *s* and *d*, which is very common.

[3] *οὐ λήψῃ ἀντίζηλον*, LXX.; in pellicatum illius non accipies, Lat. Vers. (S. Jerome), *i.e.* concubinage. S. Augustine comments on it in this sense: Hic non prohibuit *superducere*, quod licebat antiquis propter abundantiam propagationis, sed sororem sorori noluit *superduci*, quod videtur fecisse Jacob.—*Quæst. in Levit.* in loco.

[4] Hooker, *Eccles. Pol.* v. xlv. 2.

[5] *Deceased Wife's Sister*, p. 7; C. Wordsworth, Bp. of Lincoln.

infer from this text, that Samuel came to see Saul after his death? Again, we read that Michal, the daughter of Saul, had no child *until the day of her death* (2 Sam. vi. 23). Was she then a mother in her grave? Christ promised to be with the Apostles *until the end of the world* (S. Matt. xxviii. 20). Will He begin to be absent from them then? No; He will then come in His glorified body, and they will be for ever with the Lord (1 Thess. v. 17)." And in the light of these illustrations he gravely asserted that the meaning of the passage before us was "that though a man's wife may be old and infirm or ungracious, and though her sister may be more fair and attractive in person and disposition, yet he may not espouse the sister in addition to the wife, *however long the wife may live.*"

It seems obvious to ask whether there is any real parallel between this case and those which have been here quoted as explanatory of its meaning? The Hebrew expressions are not identical; and in these latter the context settles it; for it is unmistakably clear that there could be no such after-consequences; death puts an end to locomotion, and makes childbearing a physical impossibility; but the death of one wife does not preclude marriage with another. The analogy, therefore, is a false one.

The old Versions[1] distinctly favour the more natural conclusion; and it is hardly too much to say that we cannot interpret it in any other way without doing violence to the commonest usage of language. It will suffice, perhaps, to quote from a Jewish authority of weight and importance; in an old commentary on this Book, known as the Pesikta,[2] it is said, "In her life it (*i.e.* marriage) is bound,[3] but after her death it is permitted, for the law binds it only during the time when they might become enemies to one another."

We are compelled, then, on principles of candid criticism, to confess that the accepted Jewish interpretation was probably right, when it drew from this clause the right to marry the sister of a deceased wife. It will be necessary, however, for the satisfaction of those who think otherwise, to point out the difficulties standing in the way of the chief, at least, of the common expositions, which have been supposed to avoid the above apparently objectionable conclusion.

[1] LXX., ἔτι ζώσης αὐτῆς; Vulgate, adhuc illa vivente.

[2] Cf. Ugolini *Thesaurus*, xvi. p. 134.

[3] אסר to bind, *i.e.* to forbid, just as to loose is to allow. The word was commonly used in the phrase "Shammai binds, Hillel looses."

III.

Did Moses prohibit Polygamy?

NOT a few interpreters assert that the marginal reading of the Authorised Version in Leviticus xviii. 18 is the right one, and instead of "a woman to her sister," they would render it "one wife to another," thus making it simply a prohibition of polygamy. There is, it is true, in Hebrew an idiomatic use of the expression of very common occurrence, by which things or persons of exactly the same kind, or corresponding to each other, are coupled together, under the figure of "a man to his brother," or "a woman to her sister," according as they are in their nature masculine or feminine. There are in all more than forty instances where the figure occurs in this or a slightly altered form. The feminine is found eight or nine times; thus, "The five curtains shall be coupled together, one to another," or literally, "a woman to her sister";[1] "that the loops may take hold one of another,"[2] or, "a woman and her sister"; "two tenons shall

The disputed verse interpreted as a prohibition of polygamy.

[1] Exod. xxvi. 3. [2] *Id.* 5.

there be in one board set in order one against another,"[1] or "a woman against her sister"; or again, "their wings were joined one to another,"[2] or "a woman to her sister."

Difficulties involved in this.

Now, in none of the numerous cases in which this phraseology is used does the word brother or sister express blood-relationship. Such a circumstance suggests at once the question, why should this one instance be treated as exceptional? Two or three answers may be given. First, it creates a great difficulty to say that a word is used figuratively in one sense, when it has been used several times immediately before literally. Its primary sense is of an actual sister; to give to it the secondary meaning of "a fellow," in a passage dealing accurately with exact relationships, is at least exceedingly awkward.

Secondly, the phrase usually follows a plural antecedent; thus, "the *curtains* shall be coupled together, one to another"; "their *wings* were joined one to another"; so that according to analogy we should have expected to read here, if it were so used, "Thou shalt not take *women*, or *wives*, one to another," *i.e.* "a woman to her sister."

Thirdly, the idiom is used of things which are alike and exactly correspond, but by the rules of

[1] Exod. xxvi. 17. [2] Ezek. i. 9; cf. also *id.* 23 and iii. 13.

polygamy, the first wife was always assigned a superior position, and though the secondary wives or concubines had rights secured to them, they were all of a distinctly lower order. There was certainly no such similarity as was suggested by the cherubim, or a pair of wings or curtains; and it was the close and minute resemblance to each other that gave its pertinence in these cases to the figure of the sisterhood to express their likeness.

History in favour of the literal rendering.

Yet, further, there are most serious objections of a different kind. There is the historic ground that it is an altogether new interpretation. For the first fifteen centuries and a half it was never mentioned by a single interpreter of any kind; whereas the literal meaning of the words was universally accepted in the Jewish Targums and the Mishnah as well as in the Greek and Latin Versions. The evidence of the Greek Version, commonly called the Septuagint, is most conclusive; it was made by Hellenistic Jews at Alexandria, some time before the Christian era, and it renders the words, not, as it invariably does in the passages that are obviously figurative, "one to another," [1] but literally "a woman in addition to her sister." [2]

[1] Or in a similar form, *ἑτέρα τῇ ἑτέρᾳ*—ἀλληλαῖς *εἰς ἑκάστην*—*ἑτέρα πρὸς τὴν ἑτέραν*. Exod. xxvi. 3, 5, and Ezek. iii. 13.

[2] *γυναῖκα ἐπ' ἀδελφῇ αὐτῆς*.

Again, there is the most cogent and conclusive argument of all: it is contradicted by the logic of facts. The Mosaic legislation, so far from prohibiting polygamy, recognises its validity; for in two places it regulates the husband's duties, and the children's rights of inheritance, in families where there is more than one wife.

Special provisions in Scripture where a man had more than one wife.

"If he take him another wife; her food, her raiment, and her duty of marriage, shall he not diminish. And if he do not these three unto her, then shall she go out free without money."[1]

"If a man have two wives, one beloved, and another hated, and they have born him children, both the beloved and the hated; and if the first-born son be hers that was hated: Then it shall be when he maketh his sons to inherit that which he hath, that he may not make the son of the beloved first-born before the son of the hated, which is indeed the first-born: But he shall acknowledge the son of the hated for the first-born, by giving him a double portion of all that he hath: for he is the beginning of his strength; the right of the first-born is his."[2]

Moreover, the after-history of the people witnesses to the absence of any prohibition of polygamy.[3]

[1] Exod. xxi. 10, 11. [2] Deut. xxi. 15-17.
[3] Cf. *supra*, pp. 15, 16.

Now, it is necessary to safeguard ourselves by a statement of our position; for in accepting the interpretation of the eighteenth verse, as not prohibiting marriage with a deceased wife's sister, we are sure to be taunted with having surrendered the Scriptural argument, whereas nothing could be further from the fact. All that we have given up is the evidence of a single disputed verse. A few years ago an appeal was addressed to all the Hebrew scholars of eminence in Europe,[1] and their opinion was given upon the meaning of this particular verse in the Old Testament, and practically on this alone.[2] And when something like a consensus of judgment was discovered, it was concluded and confidently asserted that the key to the whole position had been taken, and henceforward the Scriptural argument must necessarily be abandoned. This, however, is so far from being the case that we are able to surrender the particular verse without any fear for the safety of the argument, which is based not on an isolated text, but on the general teaching and principle of the Mosaic Code.

The Scriptural argument by no means abandoned.

[1] *Opinions of the Hebrew and Greek Professors of the European Universities*, obtained by Lord Dalhousie, and published in 1883.

[2] The Greek professors were asked to interpret one text of the New Testament, viz. Ep. to the Ephes. v. 31; but we are here concerned only with the Levitical Code.

IV.

The Levirate law an example of concessive legislation in compliance with Jewish prejudice.

THE opening prohibition, "None of you shall approach to any that is near of kin to him," seems to raise a barrier at the very entrance against any union so close as that with a deceased brother's widow or the sister of a deceased wife. But the Talmudists maintain that if "near of kin" was primarily intended to embrace such relations as these, yet exceptions were made by which these very marriages received the sanction of Moses. In the former case there is no question that, under certain conditions, the impediment was removed. It is written down in the Law in explicit terms, together with the object for which the exceptional union was made permissible. In the latter case, the Jewish contention has been strongly resisted, though, as we have already stated, upon insufficient evidence.

The right to marry a brother's widow conceded under exceptional conditions.

Let us consider the cases separately and in detail.

The first is commonly known by the Hebrews as a Levirate[1] marriage, *i.e.* the marriage of a brother-in-law, and is erroneously assumed to have originated with them. It existed in Israel, no doubt, in Patriarchal times, but the discovery of numerous traces of the custom among many Oriental tribes, both in ancient and modern times,[2] has led to another conclusion. It certainly prevailed among the Canaanites three hundred years before the time of Moses, when the Israelites dwelt and intermarried with them. The ancient Greeks followed it at Athens and Sparta;[3] and it has an acknowledged place among the Hindus, who trace back their legislation to the remotest antiquity.[4]

The probable origin of the Levirate law.

The practice as allowed under the Mosaic legislation is described as follows in the Book of Deuteronomy, xxv. 5-10:—

"5. If brethren dwell together, and one of them die, and have no child, the wife of the dead shall not marry without unto a stranger: her husband's brother

[1] From the Latin *levir*, a husband's brother; in Greek, δαήρ.

[2] It has been found among the Arabians, Persians, the Caucasian tribes, Africans, and, to a large extent, among Hindus. Cf. Maine's *Early Laws and Customs*, p. 100; Burckhardt's *Notes*, i. 112; Diod. Siculus, xii. 18.

[3] Maine's *Early Laws and Customs*, p. 100.

[4] *Id.* p. 102-8. For numerous other references compare *The Principal Arguments*, etc., by J. Th. Dodd, pp. 14, 15.

shall go in unto her, and take her to him to wife, and perform the duty of an husband's brother unto her.

"6. And it shall be, that the first-born which she beareth shall succeed in the name of his brother which is dead, that his name be not put out of Israel.

"7. And if the man like not to take his brother's wife, then let his brother's wife go up to the gate unto the elders, and say, My husband's brother refuseth to raise up unto his brother a name in Israel, he will not perform the duty of my husband's brother.

"8. Then the elders of his city shall call him, and speak unto him: and if he stand to it, and say, I like not to take her;

"9. Then shall his brother's wife come unto him in the presence of the elders, and loose his shoe from off his foot, and spit in his face, and shall answer and say, So shall it be done unto that man that will not build up his brother's house.

"10. And his name shall be called in Israel, The house of him that hath his shoe loosed."

It must, then, be considered as a heathen law, which was readily accepted by the chosen people from its singular affinity to Jewish proclivities.

Briefly stated, as we find it in its earliest form, it was a law of obligation, that if a husband died childless, his brother[1] should marry the widow and raise up seed to perpetuate the family name and property.

It has been contended that the language of the original does not imply that "the next-of-kin," as it is written in the margin, was literally a "brother;" but that in accordance with a familiar usage of the Jews, it bears a wider application. In support of this theory, it has been said[2] that when the Sadducees brought before our Lord the case of the "seven brethren" who had taken to wife the same woman in succession, they were quoting a well-known historic fact in the life of Sara recorded in the Book of Tobit. After having had seven husbands, all of "whom Asmodeus, the evil spirit, had killed before they had lain with her," Raphael was sent "to give Sara, the daughter of Raguel, for a wife to Tobias the son of Tobit: because she belonged to him by right of inheritance";[3] but Tobias, whom she claimed by the Levirate law, was

A suggested explanation of the relationship of the "seven brethren" spoken of by the Sadducees.

[1] The Hebrew word אָח is, no doubt, used in a wide sense, as, *e.g.* a fellow-tribesman, Numb. viii. 26; of the same people, Amos i. 9; or of a friend, 1 Kings ix. 13. In Deut. xxv., in the margin of A.V., "next kinsman."

[2] *Philadelphus*, 59.

[3] Tobit iii. 8, 17.

certainly not *own brother* to any of the seven preceding husbands.

Such an interpretation would, no doubt, reduce the difficulty; it would not remove it; for even if brother be understood of "next of kin" only, such an one is excluded from the list of marriageable persons by the general enactment placed in the forefront of the Levitical Code. It could hardly be regarded as other than an evasion, which it would be very dangerous to adopt in the face of the common tradition accepted by the Jews.

The practice grew up in all probability out of that strong desire, which is found to dominate so many of the Eastern nations, of handing down one's name to future generations. In no nation was it stronger than in the Jewish; and such a provision as the Levirate marriage offered, exactly coincided with their laws of inheritance, and with that innate shrinking from the extinction of their memory which characterised the Hebrew race. It encouraged, moreover, a laudable ambition, felt by every Jewish wife, that she might be the mother of the promised Messiah, that in her seed all the nations of the earth should be blessed. We find it in its original and most stringent form in the family of Judah.[1] Er, the wife

Jewish dread of being childless.

[1] Gen. xxxviii. 8.

of Tamar, had died "leaving no seed"; whereupon the father compelled Onan to take the widow against his will, in order to perpetuate his brother's name.

When Moses was called upon to legislate for his people, he found the practice commonly recognised and in full vigour; it traversed a fundamental principle, which he believed to be in accordance with the Divine Will, that in marriage there should be "no approach to any that is near of kin"; but inasmuch as the human lawgiver is obliged to consider the exigency of times and circumstances, he had no alternative but to allow its continuance as part and parcel of that concessive legislation which was wrung from him against his will. It finds its analogy in his mode of dealing with slavery or divorce; and just as in these cases he determined to mitigate the evil where he was powerless to eradicate it, so here he introduced some important modifications of the prevailing practice.

Moses constrained to modify the law in the case of marriage as he did in other cases.

In the first instance, he abrogated the compulsory obligation. What hitherto had been regarded in the light of a command was turned into a permission. It is true, in the Authorised Version we read, "Her husband's brother shall go in unto her, and take her to him to wife,"[1] but that this only means "may go

[1] Deut. xxv. 5.

An obligatory law of the heathen made permissive only among Jews.

in," according to a common usage of the future tense, is clear from the provision that is made immediately after, in case he should decline. It is extremely probable, moreover, that the ceremony which took place before the elders was intended as a modification of a severer penalty imposed under heathen regulations. It consisted of two parts—First, the widow loosed the shoe from off his foot;[1] this was her security that the unwilling brother had renounced all right over the wife and inheritance of the deceased. Secondly, she "spat in his face," and said, "So shall it be done unto that man that will not build up his brother's house." According to Jewish interpretation, she spat "before him," not "in his face;" it was to mark her sense of contempt for the man who had slighted her, and done dishonour to her husband.

Again, Moses introduced another limitation, for he made the law inapplicable save for such brethren as dwelt together in the same neighbourhood. Without this limitation it might become a serious burden to a man to have to remove his abode to a distance, or else to fetch the widow and all that appertained to her to his own house.

[1] Just as to plant the foot upon any thing or place symbolised possession, so to loose the shoe and give it to another implied renunciation.

Yet, further, in proof that such a custom, as Moses sanctioned it, may not be interpreted as lending any general countenance to marriage with one so near of kin as brother-in-law or sister-in-law, it is worth while to notice how little like a real marriage such an union was regarded. We showed before in the case of remarriage after divorce under the Mosaic dispensation, that the second contract was stamped with marks of distinct inferiority;[1] so it is here. The very object of the union was something immeasurably below that for which marriage was instituted; its highest aim was held to be not the supply of "an help meet for man," but simply "to raise up seed"; and the very term employed to describe the action was not that of "marrying," but one which in the Hebrew signifies "making pregnant."[2] The offspring, too, of the union was not in the eye of the law its father's, but its uncle's child.[3] Thus in its essential features it was as unlike a true marriage as it is possible to conceive; there can be little justification, therefore, in dragging it into a precedent for the union of such close relations in regular and lawful wedlock.

A Levirate marriage stamped with marks of inferiority.

[1] Cf. *supra*, pp. 31, 32.

[2] יבם : יבמות is the title of the Treatise in the Mishnah for the regulation of such unions.

[3] This was the same in the Hindu law. Cf. Maine, 106.

Such we believe to be the right way of regarding this custom. That it was repugnant to Moses there can be little doubt, in the light of the fact that, under ordinary circumstances, he distinctly prohibited such an union: "Thou shalt not uncover the nakedness of thy brother's wife";[1] but so was polygamy, and so was divorce; nevertheless he was obliged to concede the right in consequence of prejudices which he was powerless to withstand.

The right of the Divine Lawgiver to suspend the penal nature of an infringement.

A Divine law may be suspended under exceptional circumstances. It derives its force from the revealed will of an unquestioned authority, but if, under altered circumstances, that same authority withdraw the obligation, its operation ceases. For instance, Moses was commanded to lay down the enactment, "Thou shalt not kill"; but its general observance was not inconsistent with the belief that under some conditions homicide might possibly be justifiable. When in his righteous anger against the worship of Baal-peor, Phinehas took a javelin in his hand and slew Zimri and the Midianitish woman, God manifested His approval by staying the plague from the children of Israel.[2] So it might be in regard to union within the forbidden degrees. God, Who made the law, might suspend the inces-

[1] Lev. xviii. 16. [2] Numb. xxv. 8.

tuous character of it; He had done so in the beginning of the race, and the legislator, while making all possible provisions for discouraging the practice, nevertheless admitted it, under special and exceptional circumstances, as part of his concessive and temporary legislation.

V.

A Second Illustration of Concessive Legislation.

JEWISH authorities claim permission to marry a deceased wife's sister; and a careful and unbiassed examination of what is written in the Law has convinced us that, while all analogy and legitimate inference would have forbidden such an union, it was nevertheless, for reasons which have not been revealed, as in the preceding exemption, allowed to the Jews by Moses.

The grounds on which the Jews justify the right to marry a wife's sister.

Talmudists assert that the permission is based on perfectly intelligible grounds. Now I do not think that it devolves upon us to test the validity of these. We have to face the fact; they satisfied Jews, and they have been acted upon in the almost universal practice of the nation. We do not by any means accept them, but they were recognised by Moses as sufficient to satisfy him that some concession was called for to meet the case. It is quite possible that

they may have been perfectly valid for Jews, while they are wholly invalid for Christians. This we shall see hereafter.

In the time of Moses there was a rooted belief in the inferiority of woman, and no legislation would have gained the acceptance of the people which did not recognise this principle in every relationship between the sexes. The social level of a woman's status was in all things lower than that assigned to man. It was a consequence of the fall of Adam, which began to take effect when Lamech destroyed the primal equality by taking to himself two wives; and it developed rapidly under the practice of polygamy. It was absolutely impossible for a husband to render to more wives than one the love and respect which God had intended under the original design of monogamy. Man might find his "exact counterpart" in one, not in many. The highest feelings of devotion, which marriage was meant to create and foster, could have no scope in a household where it had many claimants in place of one; and instead of the wife sharing her husband's thoughts and aspirations, and awakening a return of profound respect and esteem, she lost her rightful prerogative, and became not infrequently a mere minister to his baser passions.

An inherent conviction of the inferiority of woman.

Polygamy helped to preclude a proper respect for woman.

Evil consequences of such a low estimate.

The inferiority thus established was exemplified in many ways. Men claimed, without any to dispute the right, to be free to sever the marriage bond and put away their wives on the slightest pretext; but under no conceivable circumstances was a woman permitted to take the initiative in divorce.

A betrothed wife was visited with the heaviest penalty for a breach of chastity,[1] but the husband transgressed, as often as he liked, with complete impunity. A woman's subjection to the ordeal of bitter waters was a further and forcible proof of her humiliating position.[2]

In the matter of property, too, she was placed at a disadvantage, for she could only inherit provided she had no brother;[3] and in the choice of a husband she was restricted within the limits of her tribe.[4] Even her covenants with God were not held sacred; for if she made a vow, "wherewith she bound her soul," it might be nullified at the will of her husband.[5]

The idea of woman's inferiority was kept constantly before the Jewish mind by the daily prayer in which a man was taught to bless God because

[1] Deut. xxii. 21.
[2] Numb. v. 11-29.
[3] Numb. xxvii. 8.
[4] *Ibid.* xxxvi. 6-8.
[5] *Ibid.* xxx. 8.

He had not made him a Gentile, a slave, or a woman.[1]

But it is unnecessary to multiply illustrations; it is all gathered up into a single yet startling summary, in which the son of Sirach delivered his verdict in the expressive sentence: "Better is the baseness of man than a woman's goodness."[2]

It is only, the Jew says, when we recognise this distinction in the status of men and women that we can rightly understand the Levitical Code of Marriage. Parity of reason or analogy, he argues, are out of the question in interpreting its enactments; because it is forbidden for a man to marry his aunt, or a brother his brother's widow, it by no means follows that a niece may not marry her uncle,[3] or a sister her sister's widower. Indeed, the converse is deliberately rejected as wholly inapplicable, and for the following reason. A man is naturally bound to look down upon his wife and hold her in lesser honour and esteem from her inherent inferiority; but he is equally bound to look up to and respect his father and mother, and also his aunt,

[1] Taylor's *Pirke Avoth*, p. 29.

[2] *κρείσσων ἡ πονηρία ἀνδρὸς ἢ ἀγαθοποιὸς γυνή.* Ecclesiasticus xlii. 14.

[3] Nevertheless in the Kur'an, whose enactments are largely based on the Jewish Code, the niece is specified in the category of those whom a man is not allowed to marry.—*Sur.* iv. 20.

Why a man may not marry his aunt.

because she belongs to their generation.[1] To marry an aunt, therefore, would create a most serious anomaly; for her claims on her husband's respect as one with his parents, and her recognised subjection as his wife, were quite incompatible. Such a contingency, therefore, was provided against by legal prohibition.

Why a man may marry his niece or his sister-in-law.

An uncle, however, is perfectly free to marry his niece, though the relationship may appear to be the same, because her position as his wife and her status as belonging to the generation below him, in no way clash with Jewish prejudices.

The same rule, it is asserted, applies, though less obviously, to marriage with a brother's wife or a wife's sister. It is forbidden in the former case, because the woman by marrying his brother has become one with him, and is raised to his level;[2] "Thou shalt not uncover the nakedness of thy brother's wife: it is thy brother's nakedness." But

[1] This was strongly urged by one of the French Jurists, Emmery, who gave evidence before the Council of State in France against allowing marriage with an aunt in the Code Napoleon. He was of a Jewish family, and clung to his people's belief. "It was difficult," he said, "to reconcile the idea of the respect which was due to an aunt from her nephew with that which she ought to feel for him if he became her husband."

[2] It would seem that though her inferiority remains in her relationship to her husband, yet in the eyes of others her marriage has raised her.

the wife's sister has not been so raised; her inferiority remains, therefore a brother-in-law is free to marry her, if he will.

The theory is intelligible in its application to the former cases of the aunt and niece; but it is most difficult to realise its force in reference to the latter. Nevertheless we have been assured by a most learned Talmudist,[1] that it creates no difficulty whatever in the estimate of a Jew.

The Jews, however, do not base their interpretation of the Law upon this alone; they have, they say, another principle somewhat akin upon which they also rely. It is this: According to the Hebrew conception a wife is more nearly related to her husband's family than a husband is to his wife's. By marriage the wife loses all rights in her own family, and becomes completely absorbed into that of her husband, so that his belongings are equally hers. The husband loses no rights in his family, and undergoes no absorption into that of his wife. It is easy to see how such a distinction would be the natural outcome of polygamy. Each wife might establish the closest relationship with the family of one husband; but the

The husband not absorbed into his wife's family as she is into his.

[1] The late distinguished Talmudic Reader at Cambridge, Rabbi Schiller-Szinessy.

recognition of a similar tie by him to the families of many wives was a burden to which no Jew would submit.

On this principle a man was prohibited from marrying his brother's widow, because she had become so identified with her husband's family that they stood to each other in the relationship of actual brother and sister.

A husband is not brought into the same close relations with his wife's family; her sister does not become his sister; therefore he is at liberty to marry her. This principle, however, they could only apply partially, viz., to relations in the collateral, not in the ascending and descending line, because the liberty of marrying the wife's relations was expressly withheld in the case of the mother, daughter, and granddaughter. It seems natural to us to object that marriage must bring a man into close relationship with all of his wife's family or none; but we have not to dispute the position, only to state it.

We have now set forth the principles upon which a Jew claimed the right to marry his niece and his wife's sister. We have seen also under what circumstances he claimed an exceptional or restricted right to marry his brother's widow. In the last

case there can be no question that Moses allowed the claim: in the last, that of the wife's sister, the *prima facie* meaning of a disputed verse, at least, suggests a similar concession; in the case of the niece we have no evidence beyond the fact of long-established practice.

But it seems almost impossible to study the main principles of the Levitical Code without feeling that the above three cases are all illustrations only of that spirit of concessive legislation which our Blessed Lord Himself has taught us that Moses was compelled to adopt by the exigency of circumstance under the imperfect economy of the Jew. Just as the people had become so hardened in their hearts, and had so completely lost the ideal conception of conjugal union, that for the avoidance of greater evils he suffered them to put away their wives; so, in face of invincible prejudice, he was obliged to modify certain restrictions which, as legislating for all future times and people, he embodied in the Law, but which for that time and people he felt powerless to enforce.

Our Lord's authority for the concessive character of some Mosaic legislation.

Before, however, we leave the consideration of the text upon which the Jew rests his written authority, "Neither shalt thou take a wife to her sister, to vex her, to uncover her nakedness, beside

the other in her lifetime," it seems necessary to point to an argument to be drawn from it in confirmation of what has been said of its being part of the concessive law allowed by Moses. On any theory, which would make it applicable for all time, we are confronted by a most serious difficulty; for there is no process of reasoning by which the enactment may be used for Christians, to justify marriage with a deceased wife's sister, without at the same time justifying polygamy also. The prohibition not to have two sisters as wives simultaneously implies the legality of having two that were not sisters. The two provisions stand or fall together; if the one is valid, so is the other.

The danger of supposing that the eighteenth verse is applicable to Christians.

VI.

The Jewish Claim invalid for Christians.

THE prejudices with which Moses had to contend are no longer an inseparable obstacle to the maintenance of the Divine standard. Jewish distinction of the sexes, the oppressive subjection of women, their great social disabilities and general inferiority, all were done away by the Incarnation of our Blessed Lord. They were departures from the primal law, and are therefore wholly inconsistent with the dispensation of Him Who came to restore the original standard; and His apostle taught as much when he appealed to that "great mystery" of marriage, as it was instituted by God, and drew from this his argument for the reciprocal duties of husband and wife.[1] Subordination, submission, obedience—they are still seized upon as signs of inferiority, but, rightly understood, they are none of

Jewish justification for such marriages no longer tenable.

Christianity has restored woman to equal honour with man.

[1] Eph. v. 31.

them in the least inconsistent with that unchallenged claim to equal honour and respect and love which Christianity has brought back. The Gospel offered to woman the complete restitution of her position from the condition of slavery by which she had been degraded, into that of man's help-meet and exact counterpart in the married state. It was the first note that was struck by the Incarnation, and the honour conferred upon the Blessed Virgin to be the Mother of God set her sex even on a higher level than the first mother of us all had reached in an unfallen state; and henceforward, according to the Divine decree, as "there is neither Jew nor Greek, there is neither bond nor free," so "there is neither male nor female," for all are "one in Christ Jesus." [1]

The early Church removed the concessive enactments as no longer admissible.

When, then, the Fathers and Doctors of the early Church looked for marriage laws to guide and govern Christian people, they took the Mosaic Code, eliminated from it those exceptional or concessive enactments which modified its general rules, and interpreted it not in the letter but according to its broad and consistent spirit. They recognised, by its examples, certain leading principles, such as corresponding restrictions for man and woman, the absence

[1] Gal. iii. 28.

of distinction between consanguinity and affinity, the force of direct analogy, and the like. For instance, a number of relatives are expressly mentioned which a man is prohibited from marrying, but none are stated which a woman may not marry; yet the law is equally binding upon her. Again, "near of kin" is illustrated by eight who are allied by affinity, and seven by consanguinity—for purposes of marriage they are identical; or, once more, restrictions are in force, though not named in so many words, by analogy, where the degree of relationship is exactly equal, and by converse, where the same relationship is differently expressed; thus a man is forbidden to marry his father's or his mother's sister, therefore it is inferred by analogy that a woman may not marry her father's or mother's brother; or, again, a woman may not marry two brothers, therefore by converse a man may not marry two sisters. The parity of reason is self-evident. Such has been the way in which all through the history of Christianity the Church has interpreted the Levitical Code; but we are now being confidently assured that it is all a mistake, and that, through discoveries in medical science, it has been found that the restrictions in at least some of the most important relationships were based on purely physical grounds. The chief value

Certain leading principles recognised.

Supposed physiological discoveries have suggested the key to the problem.

of this newly-acquired[1] information is that it is claimed as totally disproving both the equality of the sexes and the validity of all inference about wives' sisters from brothers' wives.

One who describes himself as "a surgeon of twenty years' standing," writes:[2] "It is the fashion just now to proclaim the equality of the sexes . . . physiologically, however, it is not true, and it is the duty of the medical profession to protest against the promulgation of any dogma based upon such a false idea. The chief physiological law involved in the question is the law of heredity . . . with rare exceptions traces of the first child's father are discoverable in all succeeding children of the same mother, whatever the direct paternity of these may be. . . . The father has no similar power of transmitting traces of his former wife to the children of her successor. . . . There is a greater distinction between half-brothers and sisters when they have different mothers than when they have different fathers."

The conclusion which we are intended to draw, is that there is a commingling and "confusion of

[1] It is said that it has been long known to physiologists, but has only lately been used in connection with the Levitical Code of marriage.

[2] *The British Medical Journal*, May 21, 1887, p. 1145.

seed" where one wife has two husbands, but not where one husband has two wives; therefore marriage with a brother's widow is prohibited, but is allowed with a wife's sister. Again, it is argued, that it was in consequence of this that the exceptional statute, withdrawing the prohibition under the Levirate law, if there was no child, was rendered possible. It is regarded as a mark of the profound knowledge possessed by the framer of the Mosaic Law, and all the more worthy of our admiration, "because the facts on which it is based have only recently appeared in the annals of science."

It is, of course, within the bounds of possibility that Moses was made supernaturally familiar with many scientific questions, which later generations would have to work out for themselves by long and patient investigation; but there is no indication anywhere given in the compass of the Law itself to lead to this conclusion; certainly none that such supernatural knowledge was made the basis of his legislation. Had he known this physiological fact, it is almost inconceivable that in laying down a Marriage Code he should have been satisfied to forbid union in the case of two brothers only; the confusion of seed would take place with any successive husbands of one wife, if, as it is said, the after-

The suggestion not supported by any positive evidence.

children are not the offspring of the second only but of the first also. If the Mosaic restriction in the above case was prompted merely by physiological consequences, the same consideration should have prohibited marriage with any widow who had borne children. The confusion, no doubt, seemed worse in one case than in the other, but if it was a bar to marriage in the one instance, it was the same also in the other.

Furthermore, it is incomprehensible that no reference should have been made to such a motive for restrictions or relaxations in Jewish writings. The Talmudic treatise *Yebamoth* contains most minute details in connection with the marriage, but there is no allusion in it to any such physiological law, as is mentioned above, upon which moreover it is confidently asserted that everything depends. There is, however, sufficient evidence in the wording of the law to weaken very materially the force of the argument that has been based on this scientific information. That it was not the fear of a "double or divided paternity" that influenced Moses is shown by the forecast which he made upon any union so contracted: "If a man shall take his brother's wife . . . *they shall be childless.*"

It is precisely the same, too, in reference to mar-

riage with an uncle's widow, where the same physical law would apply: "If a man shall lie with his uncle's wife . . . *they shall die childless.*" [1]

It precludes the possibility of the special result, which, it is said, was the cause of the restriction.

We fall back, then, upon the only consistent principle, based on the original institution, viz., that relations by marriage are placed in the same category as relations by blood.

[1] Lev. xx. 20, 21.

VII.

The Witness of Christendom.

THE annals of early Ecclesiastical History supply but little material in the shape of direct and positive testimony to guide our judgment on the law and practice of the primitive Church concerning the degrees within which the faithful were allowed to contract marriage. There is a complete blank for three centuries, both in Patristic literature and in Synodical reports. Such silence may have originated in one of two causes: either that Christian legislation introduced no such departure from Jewish and Pagan practice as to call for notice; or else that the new Code of Christianity was accepted by Churchmen without dispute or hesitation. The former view would make too great a demand on our credulity. If we may judge from analogy, it is extremely improbable; for in one feature, viz., freedom of divorce, the conscience of the Church at once insisted upon a complete change

Silence in early ecclesiastical records on the subject of the forbidden degrees.

from heathen licence and Jewish declension. It is wholly unaccountable, therefore, if no provision was made against the continuance of incestuous unions.[1]

Yet further, it would be without parallel that a practice should be allowed to pass unchallenged by any one in authority, and then, after universal acquiescence lasting for nearly three centuries, be suddenly and universally condemned, and the condemnation remain without appreciable opposition for many hundred years.

The latter of the two views is infinitely more reasonable. The early Christians, knowing that Christ had stamped part of the Mosaic legislation on marriage as concessive and temporary, fell back for the formation of the new Code upon those principles and provisions which appeared to be of eternal obligation. The first of these excluded marriage with "near of kin," and judging from accompanying illustrations of the term, it would naturally embrace these three relationships, — a brother's widow, a wife's sister, and a niece. The newly-adopted rules, however, are not anywhere extant, nor is any allusion made to them till the

The early Christians reverted to the general principles of the Mosaic legislation.

[1] Without assuming the incestuous character of marriage with two sisters, there were others, *e.g.*, with a niece, which certainly called for prohibition.

beginning of the fourth century, when they find a place in the Canons and Decrees of Ecclesiastical Councils. Now it must be remembered that it was the recognised function of Councils, not so much to initiate doctrines and rules of practice as to fix and formulate them, and to impose penalties for the infringement of pre-existent laws.

The earliest notices of marriage within the forbidden degrees.

The first mention is made at the Spanish Council of Elvira,[1] 305 A.D. The bounds of restriction had been transgressed, and it became necessary to attach a penalty to the transgression, and it was done in these terms: "If any one on the death of his wife shall marry her sister, and she be a Christian, it is resolved that she be excluded from Communion for five years, unless perchance physical infirmity demands more speedy reconciliation."

The Council of Neo-Cæsarea.

The second was at an Eastern Council assembled at Neo-Cæsarea in Cappadocia. The date usually assigned to it is 314 A.D., but all that is certain is that it was ante-Nicene. It fixed the punishment for transgressing the first of the three prohibitions: "If a woman has married two brothers, she shall be excommunicated till her death; if she is in danger

[1] Si quis post obitum uxoris suæ sororem ejus duxerit et ipsa fuerit fidelis, quinquennium a communione abstineri placuit, nisi forte velocius dari pacem necessitas coegerit infirmitatis.—Can. lxi. *De his qui duabus sororibus copulantur.*

of death, and promises, in case of recovery, to break off the union, she may receive penance. But if the woman or her husband die in such an union the penance for the survivor shall be very severe."[1]

The third notice is in the Apostolic Canons, the exact date of which it is extremely difficult to fix, because the individual Canons were made at various times before they were collected together. We have discussed the probable date of the collection in the previous Part.[2] The nineteenth Canon[3] is concerned with the second and third of the cases in question. It makes no mention, it is true, of the laity, but it is hard to find a reason why these marriages should be singled out as a bar to Holy Orders, unless there was a stamp of illegality upon them. The laity, no doubt, had been setting the law at defiance; so the candidates for ordination were warned that if they did the same they would be *ipso facto* excluded from admission to the Ministry.

The Apostolic Canons.

There is, moreover, contemporary evidence in the

[1] *γυνὴ ἐὰν γήμηται δύο ἀδελφοῖς, ἐξωθείσθω μεχρὶ θανάτου, πλὴν ἐν τῷ θανατῷ, διὰ τὴν φιλανθρωπίαν, εἰποῦσα ὡς ὑγίανασα λύσει τὸν γάμον, ἕξει τὴν μετάνοιαν. ἐὰν δὲ τελευτήσῃ ἡ γυνὴ ἐν τοιούτῳ γάμῳ οὖσα ἤτοι ὁ ἀνὴρ, δυσχερὴς τῷ μεινάντι ἡ μετάνοια.*—Can. ii.

[2] Cf. *supra*, p. 95.

[3] Sometimes numbered as the eighteenth.

Imperial legislation.

Imperial legislation of this epoch. The conversion of Constantine paved the way for changes in the Civil Code; and but little time was allowed to elapse before they were made. The first alteration was connected with the marriage of a niece, and it was due to the instigation of Constantine, 339 A.D. There had been a time when even the conscience of Pagan Rome rebelled against such an union; but it was legalised[1] to meet the desires of the Emperor Claudius, who had become enamoured of Agrippina, the intriguing daughter of his brother Germanicus. His example was followed by others; and though from time to time the old feeling of repugnance was revived, and attempts were made to repeal the permission, it remained on the statute-book till Constantine erased it. Capital punishment was imposed by him as the penalty of infringement, and the adoption of such severity bespeaks very strongly the recognised aversion to such a marriage on the part of the Christians. A few years later the Emperor went further, and brought the Civil Code into further harmony with the Ecclesiastical,

[1] Vitellius made an impassioned appeal to the Senate in favour of the marriage, and predicted that it would soon be generally accepted. Claudius called upon them to change the law; quo justæ inter patruos fratrumque filias nuptiæ etiam in posterum statuerentur.—Tacitus, *Ann.* xii. 7.

by prohibiting the two remaining unions, with a brother-in-law or sister-in-law; and all these three prohibitory enactments were ratified and confirmed by a succession of emperors down to Anastasius.[1]

Its witness to Christian practice.

It all witnesses indirectly but unmistakably to the prevailing practice of the Christians, for the Civil Power would never have ventured to tighten the cords of restriction to such an extent, except in view of assimilating its laws to the religion which the State had so lately embraced. It seems quite impossible to suggest any other adequate or satisfactory motive. The evidence, then, which this Imperial action supplies, is second only in value to that of positive historic proof. This latter is gathered into a focus, as it were, in the writings of Basil the Great, Archbishop of Cæsarea, at a little later period. Now as many attempts have been made to shake the value of his testimony, it will be well to safeguard ourselves by stating that we are here only appealing to him as a recorder of an important fact. It would not be difficult, if necessary, to vindicate him from the charges which are supposed to weaken or even invalidate his authority; but, for the purpose in hand, it is a

[1] Theodosius the Great, Arcadius, and the younger Theodosius. Nevertheless the law was transgressed even by emperors. Honorius married his sister-in-law, daughter of Stilicho.

matter of indifference whether he took too high or too low an estimate of the ordinance of matrimony; it is, however, of supreme consequence that his character for honesty and truthfulness has never been impugned; for, this being granted, what he says about the practice and general sense of Christian antiquity ought to be conclusive. It is found in a letter to Diodorus, a Bishop of Tarsus, and runs as follows: "We received a letter bearing the sign-manual of Diodorus, but in all else more characteristic of any one rather than of Diodorus; for it seems to me that some crafty fellow personated you in order to gain credit and acceptance with those who read it. Now, whoever he was, when asked by some one whether it was lawful to marry his deceased wife's sister, instead of being horror-struck at the question, he actually listened to him with calmness, and boldly and combatively supported his wanton desire. If I were still in possession of the letter, I would have sent it to you, and you would have been fully capable of defending both yourself and the truth; but as the man who showed it me took it away again, and has been carrying it about as a sort of trophy against us, who have all along forbidden such a thing, saying that he had authority in writing to do so, I

S. Basil's letter to Diodorus.

have now written to you that we may join our forces together against that spurious letter, and leave it no weight, such as it might easily have, to injure any who may meet with it. This, then, is of primary import in a matter of this kind; we can oppose to them our custom, which has all the force of a law, because our rules have been handed down for us by holy men from father to son. And this is the custom I speak of: if any one, yielding at any time to the impulse of impure desire, has been betrayed into an unlawful union with two sisters, it is not to be accounted as marriage, nor may the contracting parties be admitted to the congregation of the Church until they have separated the one from the other. Therefore, even though we had no other argument to use, our custom by itself would suffice for the maintenance of what is right."[1]

[1] ἀφίκετο ἡμῖν γράμματα τὴν ἐπιγραφὴν ἔχοντα Διοδώρου, τὰ δὲ ἐφεξῆς ἄλλου τινὸς πρέποντα εἶναι μᾶλλον ἢ Διοδώρου. Δοκεῖ γὰρ μοί τις τῶν τεχνικῶν, τὸ σὺν πρόσωπον ὑποδὺς, οὕτως ἑαυτὸν ἀξιόπιστον ἐθελῆσα ποιῆσαι τοῖς ἀκροωμένοις. Ὅς γε, ἐρωτηθεὶς ὑπό τινος, εἰ θεμιτὸν αὐτῷ πρὸς γάμον ἀγαγέσθαι τῆς γυναικὸς τελευτησάσης τὴν ἀδελφὴν, οὐκ ἔφριξε τὴν ἐρώτησιν, ἀλλὰ καὶ πράως ἤνεγκε τὴν ἀκοὴν, καὶ τὸ ἀσελγὲς ἐπιθύμημα πάνυ γενναίως καὶ ἀγωνιστικῶς συγκατέπραξε. Εἰ μὲν οὖν παρῆν μοι τὸ γράμμα, αὐτὸ ἂν ἀπέστειλα, καὶ ἐξήρκεις σαυτῷ τε ἀμῦναι καὶ τῇ ἀληθείᾳ: ἐπεὶ δὲ ὁ δείξας πάλιν ἀφείλετο, καὶ ὥσπερ τι τρόπαιον καθ' ἡμῶν περιέφερε, κεκωλυκότων τὸ ἐξ ἀρχῆς, ἔγγραφον ἔχειν λέγων τὴν ἐξούσιαν. ἐπέστειλα νῦν σοι, ὥστε διπλῇ τῇ

Now there is much in this to corroborate the conclusion that those laws which, as we have shown, received synodical ratification at the beginning of the fourth century, had long been recognised in the Church. In the first place, the idea that such views as are attributed to Diodorus could have the *imprimatur* of a ruler of the Church seemed to him quite preposterous, and filled him with horror; it must be, he thought, a pure invention from beginning to end of some successful impostor. No bishop would dare to fly in the face of an unbroken custom, which had been transmitted from previous generations, and had acquired all the binding force of a legal enactment.

The weight of S. Basil's testimony.

S. Basil puts the acknowledged practice of Christians in the forefront of his argument, and asserts that it ought to carry with it immediate conviction. Now, we know that Diodorus was

χειρὶ ἡμᾶς ἐλθεῖν ἐπὶ τὸν νόθον ἐκεῖνου λόγον, καὶ μηδεμίαν αὐτῷ ἰσχὺν καταλιπεῖν, ἵνα μὴ ἔχῃ βλάπτειν ῥᾳδίως τοὺς ἐντυγχάνοντας. πρῶτον μενοῦν, ὃ μέγιστον ἐπὶ τῶν τοιούτων ἐστὶ, τὸ παρ' ἡμῖν ἔθος, ὃ ἔχομεν προβάλλειν, νόμον δύναμιν ἔχον, διὰ τὸ ὑφ' ἁγίων ἀνδρῶν τοὺς θεσμοὺς ἡμῖν παραδοθῆναι. Τοῦτο δὲ τοιοῦτόν ἐστιν: ἐάν τις, πάθει ἀκαθαρσίας ποτὲ κρατηθεὶς, ἐκπέσῃ πρὸς δυεῖν, ἀδελφῶν ἄθεσμον κοινωνίαν, μήτε γάμον ἡγεῖσθαι τοῦτον, μήθ' ὅλως εἰς Ἐκκλησίας πλήρωμα παραδέχεσθαι πρότερον, ἢ διαλῦσαι αὐτοὺς ἀπ' ἀλλήλων. Ὥστε εἰ καὶ μηδὲν ἕτερον εἰπεῖν ἦν, ἐξήρχει τὸ ἔθος πρὸς τὴν τοῦ καλοῦ φυλακήν.—S. Bas. *Epistol. Classis.* ii. Ep. clx.

no ordinary person, who might have been imposed upon by the strength of such an assertion, but a man of profound learning, capable therefore of refuting him at once, if he had made a declaration which history failed to substantiate.

A confident appeal, then, like this to the custom of the Church, whether we think of the character of him who made it or of the knowledge of him to whom it was made, is most conclusive.

It will not be necessary to dwell in detail on the subsequent testimony of history. We have dwelt at length upon S. Basil's evidence, because the full force of the promoters of this marriage has been concentrated upon it. They have asserted that it is the key to the whole position; that he was practically the legislator who foisted this prohibition into the Christian Code for the furtherance of his own peculiar and heretical notions, which made him averse to marriage in general, and this in particular.[1] His influence, they say, was so great that the whole Church was affected and controlled by it. Without accepting their premises, we welcome their admission that at least the after history of Christendom

[1] "The spirit . . . was that of regarding marriage as an inferior state, and was not a Catholic but an heretical spirit. It was borrowed from the Gnostics."—Cf. *A Summary of the Arguments against Marriage with a Deceased Wife's Sister*, p. 8.

The corroborative character of the subsequent testimony.

witnesses to the illegality of the union, and content ourselves, as the fact is not disputed, with the briefest summary. After the fourth century a succession of Provincial Councils and Local Synods indorsed the restrictions; some for one degree, some for another, some again for all three. The first was called at Rome by Innocent I., 402 A.D., to consult upon a variety of questions which had been submitted to him by the Gallican bishops. The answers were made in the form of Canons, the ninth of which ruled that "no Christian may marry his deceased wife's sister, nor besides his wife have a concubine."[1] The same marriage, as also that with a niece, was pronounced incestuous by the Council of Agde in 506 A.D. This century was marked also by numerous canonical decrees on the same lines: at Orleans in 511, 538, and 541 A.D.; Epaone, 517 A.D.; Auvergne, 533 A.D.; Paris, 557 A.D.; Tours, 567 A.D.; and in several other places.[2] In the East, the Council in Trullo, which is regarded as œcumenical by that branch of the Church, the Canons of Basil were accepted and renewed.

[1] Mansi, iii. 1133; Hefele, ii. 429, Clark's Transl.

[2] Auxerre, Auvergne, Metz, Mayence, and Arles. The constant reiteration of the Canons points to attempts at evasion, but no less at a determination to uphold the law.

Many of these ecclesiastical decisions embraced, no doubt, other restrictions based upon spiritual as well as natural relationships, and multiplied impediments unauthorised by Scripture, but we are not now concerned with these. All we desire to show is, that the three prohibitions which we undertook to consider were never relaxed for at least fourteen centuries.

VIII.

Ecclesiastical Prohibitions not based on Scripture.

OBJECTIONS have been frequently raised to the authority of the Church on the ground that she has imposed at times restrictions which have been abandoned as untenable.

We shall be able to show that there is a broad line of demarcation between such restrictions and the prohibited degrees which are under our immediate consideration; and not only so, but that the Church in her mode of dealing with them clearly recognised the distinction. Take, for instance, the legitimacy of second marriages. There is no doubt that a tendency to discourage these is discernible in the Church, even from the earliest times. It arose out of two causes: first, the desire to restore what was thought by some to have been the primitive ideal of marriage; and secondly, the growth of asceticism, denouncing every form of self-gratification.

The legitimacy of second marriages.

When God knit together our first parents, the terms in which He instituted the union appeared to favour the idea that it was indissoluble, and of such a kind that the formation of a second would mar its integrity. The chosen people were satisfied with a far lower conception of it, and by the time when Christ came, the marriage contract had lost every element of permanence, and was broken again and again at the husband's caprice to satisfy his carnal lust and appetite. The Ideal Man, the Restorer of the primal morality, took them back in His teaching, whenever He broached the subject, to the original standard, and this, together with S. Paul's personal discouragement of second marriages, had a marked effect upon the early Church. Such unions were permissible, but they did not, in the opinion of the Apostle, betoken the highest estimate of marriage. "The wife is bound by the law as long as her husband liveth; but if her husband be dead, she is at liberty to be married to whom she will; only in the Lord. But she is happier if she so abide, after my judgment; and I think also that I have the Spirit of God." [1]

Thus Hermas, one of the Apostolic Fathers, gives

[1] 1 Cor. vii. 39, 40.

Patristic testimony.

his opinion in almost the selfsame language, saying of one whose wife was dead, that if he marries again, "he does not sin, but if he remains by himself, he gains to himself great honour with the Lord." [1]

Clement of Alexandria writes in the same spirit: "The Apostle grants to a man leave for a second marriage: for he does not sin; . . . but he does not fulfil that highest perfection which is found in the Gospel." [2]

Tertullian was a persistent opponent of second marriages, regarding them as hindrances to holiness, but admitting their legality, though he fell at last into heresy, and denounced them as "a species of fornication." [3]

Origen, while admitting that those who marry a second time are in a state of salvation, refuses to give to them the crown of benediction.[4] This was

[1] Non peccat, sed si per se manserit, magnum sibi conquiret honorem apud Dominum.—Lib. ii. *Mandat.* 4.

[2] Apostolus veniam secundi concedit matrimonii: nam hic quoque non peccat . . . non implet autem summam illam vitæ perfectionem, quæ agitur ex Evangelio.—*Strom.* iii. c. xii.

[3] *De Uxorem*, i. 7; *De exhortatione castitatis*, ix.

[4] The crowning, especially in the East, was an important part of the marriage ceremony. Both bridegroom and bride were crowned by the priest; one of the common forms being, "With glory and honour hast Thou crowned them, Thou hast set crowns of precious stones upon their heads."—Goar's *Eucholog.* 396.

so commonly done that it became a familiar saying, "The twice married is not crowned." [1]

Other Fathers [2] upheld the lawfulness, but used their influence to discourage such unions.

The Council of Nicæa, whose Canons of course are binding, discountenanced anything like prohibition, by ordering that such "as were ordained should give a written bond that they would communicate with those who had married a second time." [3]

In later times, penance was sometimes imposed,[4] which, at first sight, indicates more than a desire to discourage second marriages; but in no case is the validity of the marriage doubted.

Here, then, we see what different treatment the Church meted out to the two cases; for the very first time marriage with a deceased wife's sister is mentioned, it was to condemn it as incestuous and wholly illegal; and never after was it regarded with any other feelings than those of most determined aversion.

The second case is the intermarriage of first

[1] ὁ δίγαμος οὐ στεφανοῦται.
[2] Hilary, Cyril of Jerusalem, Ambrose, Jerome, and Augustine.
[3] διγάμοις κοινωνεῖν.—Can. viii.
[4] Cf. *Councils of Laodicæa and Carthage*, iv.; and Theodore's *Penitential*.

The intermarriage of first cousins.

cousins. However strongly the Church discountenanced this, she did not originate the prohibition, but inherited it from the Roman Civil Law; though here, as in the Ecclesiastical Canons, it was not by any means universally enforced. In the first century after Christ such a marriage was unknown at Rome,[1] but before the close of the second the law was altered. Theodosius forbade it in the Imperial Code, and imposed the severest penalty[2] on the transgressor. During the next few years the restriction was subjected to frequent vicissitude, but finally withdrawn both for the East and West under Justinian's legislation in 529 A.D. In Canon Law the marriage was often placed in the same category of restriction[3] with one or other of the three cases on which we have been treating; but whenever it was dealt with separately, the prohibition was based not on Scriptural, but Ecclesiastical authority. It has no place in the Levitical Code, which never extends beyond the third degree. First cousins are related to each other in the fourth. The mode of reckoning degrees has varied, but we may illus-

Not forbidden on Scriptural grounds.

[1] At enim nova nobis in fratrum filias conjugia.—Tacit. *Ann.* xii. 6.

[2] Fine and confiscation of goods.

[3] Cf. Councils of Agde, Epaone, Orleans, Auvergne, Auxerre, and in Trullo.

trate it according to the computation of the Civil Law thus; of two first cousins the grandfather is the common ancestor, in whom their blood unites. From the one cousin to his father is the first step or degree, to his grandfather the second, from the grandfather to another son or daughter is the third, and from him or her to the daughter or other cousin is the fourth.

Not within the prohibited degrees.

Moses did not provide against a marriage in this degree either directly or inferentially by parity of reasoning; and the marriage of cousins is accordingly never forbidden as a transgression of Divine Law, only on apparent grounds of expediency. S. Augustine speaks of it as being allowed in his time, "because it had not been forbidden by the law of God, nor as yet by that of man." [1]

Gregory the Great, in replying to the questions of S. Augustine, discourages it, not, however, in consequence of any Scriptural prohibition, but because experience had taught him that the offspring of such an union could not thrive.[2]

[1] Quod fieri per leges licebat, quia id nec Divino prohibuit et nondum prohibuerat lex humana.—*De Civit. Dei*, xv. 16. This latter, however, is not correct.

[2] Experimento didicimus ex tali conjugio sobolem non posse succrescere.—Bedæ, *Eccl. Hist.* i. 27.

But what fixes the mind of the Church is the fact that, since the principle of dispensations has been recognised, they have been freely granted to suspend the prohibition on the marriage of cousins, but down to the sixteenth century, never for the other relationships. The Church was at liberty to withdraw a self-imposed restriction; but no human authority could interfere with those imposed by God.[1]

One more objection calls for consideration. It is sometimes said that so much stress has been laid upon the oneness of flesh in those that are married, that to avoid the charge of inconsistency the prohibition must be held to extend to the intermarriage of their near relations, so that two brothers ought to be forbidden to marry two sisters. The objection has an air of plausibility, but there is a simple fact which at once removes it. It is that there is nothing in the principles of affinity, as they are laid down in the Levitical Code, which by inference, parity of reasoning, or any legitimate argument, can be construed as imposing such a restriction.[2] A man, by marriage, can bind himself and his blood-relations in reference to a particular woman;

[1] The Roman branch, however, has claimed to be able to do this.

[2] *Cf.* S. Gregory's answer to S. Augustine, *infra*, p. 292.

and a woman can bind herself and her blood-relations in reference to a particular man, but they cannot possibly extend the obligation further.[1]

[1] I have seen the futility of the objection exposed somewhere by asking the question, What would happen if the marriage of two brothers with two sisters took place exactly at the same time? When they were married there was no relationship of affinity between them.

IX.

The Exercise of Dispensations by Ecclesiastical Authority.

The introduction of dispensing powers in the Church.

ABOUT the close of the eleventh century the Church began by dispensation to suspend the operation of those rules which had been made by ecclesiastical authority alone, at first however only for crowned heads, and for grave political reasons. Such dispensations were perfectly legitimate; if in the exercise of her disciplinary powers the Church tightened the bonds of restriction, she might, when occasion seemed to require it, relax the same, but always with one proviso, viz., that no human authority can suspend a Divine law.[1] The Roman Church, however, has claimed to do this; and after much discus-

Claims of the Roman Church.

[1] S. Thomas Aquinas, S. Bonaventura, and a large body of the Schoolmen, were very decided upon this point. Cf. S. Thom. Aq. *Suppl. Pass.* iii. Qu. 54, art. 3, sec. 59, act. 3. The question is considered at length in Pusey's Examination before the Royal Commission.—*Report*, pp. 43, 44.

sion at the Council of Trent, it was laid down that the Pope was competent to dispense "with some of the degrees named in Leviticus,"[1] though it was not determined which they were. Cardinal Manning expressed the mind of the modern Church of Rome in reference to the marriage with a wife's sister, saying that "the Church forbids and annuls it," and adding, "The Holy See can alone dispense in such cases; and it never dispenses, except (1) rarely; (2) with reluctance; and (3) for grave reasons, and to avoid greater evils."[2]

Up till the opening of the sixteenth century there is no well-authenticated instance of a dispensation[3]

[1] "If any one says that only those degrees of consanguinity and affinity which are expressed in Leviticus can impede the contraction of marriage, or dissolve it when contracted: and that the Church cannot dispense in some of them, or appoint that more impede and dissolve marriage, let him be anathema."—Sess. xxiv. Can. iii.

[2] It is not generally known that this decree was opposed by nearly 100 of the bishops present.

[3] There is much dispute about a supposed dispensation from Martin v. to the Count of Foix, in 1427, to marry his deceased wife's sister, in order to facilitate the succession in the kingdom of Navarre. It is not generally credited, and the fact that his successor, Eugenius IV., refused in a precisely parallel case, on the ground that it was beyond his authority, is an argument against its authenticity. We have the evidence of John de Turrecremata, an eminent canonist of this date, to whom the matter was referred, and he decided that it was something *quod non poterat Papa dispensare*. He argues, further, that if for corrupt purposes any Pope had done it, it might not be drawn into a precedent.

from any of the three restrictions which we are now considering. In 1500 Pope Alexander VI., Roderick Borgia, granted leave to Emmanuel, king of Portugal, to marry two sisters in succession. The exigency of State policy seemed to him to call for a relaxation, and being himself a man of no religious principle—indeed, having been "stained with incest of the deepest dye" he had no hesitation in breaking a rule of immemorial observance. His character may be estimated by the record of the historian, who tells how, at his funeral in S. Peter's, "the people crowded about his body with unspeakable joy, congratulating each other on being delivered from one who, by his immoderate ambition, his unexampled treachery, his horrible cruelty, his incestuous lust, and unheard-of avarice, had, like a venomous serpent, empoisoned the whole world."[1] This Pope went even further, and made the same concession to Ferdinand, king of Sicily, to marry Johanna, his father's sister. The chain was complete when Julius II. allowed Prince Henry to marry Catherine of Arragon, the widow of his brother Arthur. It is commonly alleged that in this last case the dispensation was justified on the ground that the previous marriage had never been consum-

The earliest instance of a dispensation.

[1] Quoted from Guicciardin by F. Hockin, Tr. p. 11.

mated; but it cannot be denied that it was so drawn up as to be valid in case this contention should ever be disproved.[1]

It has sometimes been recklessly asserted, on the basis of these and like dispensations, that the Roman Church allows such marriages, and that "she gives full liberty to all who desire them."[2] Neither of the assertions can be justified, at least in the sense in which it was made, for the very method of granting the permission is an abiding witness to the fact that the marriage is contrary to law and custom; and though at one time almost any dispensation could be bought at a price, it has never been placed within easy reach.

Reaction against the dispensing power.

In that great movement known as the Reformation on the Continent, there was a strong reaction against the dispensing authority of the Pope, and it

[1] It has, however, been disputed whether the second Bull, providing for the supposition that the first marriage had not been completed, was ever granted or not. There was an impediment in Canon Law to the second marriage, even if the first were found to be null, viz., that the King had lived previously with Anne Boleyn's sister. The terms of the Canon were "ex quocunque licito vel illicito coitu conjuncta." When his marriage with Anne was annulled, the Act which legalised it was repealed.

[2] The answer of Dr. Pusey to Dr. Lushington, Chairman of the Royal Commission, should be carefully read, p. 47. He shows how Rome considered them intrinsically wrong, though they might be made seemly by some just reason. The passage contains a *résumé* of the whole theory of dispensations.

led to the most serious departure from what had hitherto been the Catholic usage. Luther maintained that no prohibition could be sustained "which was not intrinsically valid," and the validity of this particular one was denied by the action of the Pope. He went far to cut away the universally admitted obligation of Leviticus xviii., and to reduce very largely the prohibited degrees; but he was not generally supported, Melanchthon throwing in the weight of his authority against the proposed relaxation; and after sundry vicissitudes the Protestant States fell back upon the laws of antiquity, and in Germany, Switzerland, and Sweden the marriages in question were strictly forbidden.[1]

Transfer of the dispensing authority to the King.

We cannot follow the progress of thought; but in the eighteenth century, under the influence of the humanitarianism of Voltaire, and the teaching of Michaelis, both of which acted so powerfully upon Frederick the Great, the dispensing authority formerly claimed by the Church was transferred to the King, and henceforward the laws of Prussia were completely revolutionised; and the only prohibited degrees were held to be those of blood-elations in direct ascent and descent, full or half

[1] In Germany the punishment of a public flogging was inflicted on one who knowingly married his wife's sister.

brothers and sisters, all step-parents, and parents-in-law. Hence that disastrous laxity so largely deplored[1] at the present day, when it is said that "marriage connections are constantly formed with an aunt or a niece, as well as with a brother's widow or a deceased wife's sister."

Before leaving this phase of our subject, it is refreshing to be able to turn not only to our own Branch of the Catholic Church, which has never wavered, but also to the whole of the Eastern Church—Nestorian, Syrian, Armenian, Coptic, and Abyssinian,—and to find the Canons of S. Basil in full recognition and viridity, without the slightest sanction of any dispensing power whatever.[2] It places the Law of God in its rightful position, as the one standard of obligation, from which nothing may be taken by human authority.

The Eastern Church opposed to dispensations.

[1] Cf. the evidence of a German philosopher, quoted before the Royal Commission, p. 53.

[2] It is clearly laid down in the decisions of the Spiritual Courts or Consistories of the Russian Church that "there is no possibility of the Diocesan authority either granting itself or obtaining from the Synod, or allowing to be pleaded, any dispensation for marriage within the prohibition (*sic*) degrees."—Quoted from *Rule for Spiritual Consistories* (St. Petersburg), iii. c. v. § 220, in Palmer's Statement before the Royal Commission, p. 58.

X.

The Laws of England on the Prohibited Degrees.

THERE is no trace of any distinctive law on this subject, Ecclesiastical or Civil, in the first six centuries of the Christian history of this country. As in the case of divorce so, no doubt, in respect to prohibited degrees, the legislation of the Empire was generally recognised. The first express notice of matrimonial restrictions is found in connection with S. Augustine's Mission in 597 A.D.[1] Finding certain practices at variance with those to which he had been accustomed at Rome, he consulted Pope Gregory, who sent Mellitus and others with replies to his questions in 601 A.D. Two of those questions bore directly upon the prohibited degrees: the first, "Whether two own brothers may take in marriage two sisters related to them at a great

The first official notice of matrimonial restrictions.

[1] The commonly assigned date is 596. He made his first, an abortive attempt in 595, the second in 596, but he passed the winter in Gaul and did not land in England till 597.

distance?" to which Gregory made answer, "This may be done beyond all doubt, for nothing can be found in the sacred oracles which seems to contradict it." The second question was, "Within what degree may the faithful that are related to each other engage in wedlock? or whether it be lawful to be so united with a stepmother or cousin?"[1] and the Pope's reply was, "There is a certain mundane law[2] in the Roman Republic, which allows either the son and daughter of a brother and sister, or of two brothers or two sisters, to be united; but we have learned by experience that the offspring of such an union cannot thrive; . . . therefore the distance of three or four generations is necessary to legalise marriage among the faithful. . . . It is also forbidden to marry with a brother's widow,[3] because by her former union she had become the brother's flesh."

Anglo-Saxon regulations.

Henceforward the legislation of the Anglo-Saxons, based for the most part on the judgments of Gregory,

[1] "Usque ad quotam generationem fideles debeant cum propinquis suis conjugio copulari? et noveries et cognatis si liceat copulari conjugio." Cf. Hadd. and Stubbs, iii. 20. We can only gather exactly what S. Augustine meant by the different terms, "Propinqui et cognati."

Instit. Justiniani, lib. c. x. § 4.

[3] "Cum cognata—but the meaning is made clear by what follows: "quia per conjunctionem priorem caro fratris fuerit facta."

recognises the historic restrictions, though, as we shall see, others were added.

Among the excerpts gathered by Ecgbriht, Archbishop of York, in 740 A.D., out of the Canons and decisions of the Fathers, there are several appertaining to the relationships within which marriage was lawful. He adduces synodical prohibition of marriage with a brother's widow, and indorses Gregory's decision against union with a niece or near kinswoman. In the laws of the Northumbrian Priests, 950 A.D., it is laid down that "by Divine prohibition no man take a wife that is related to him within the fourth degree."[1]

Decree of the Synod of Eanham.

At the important Council of Eanham, 1009 A.D., representing not only the Church but the Nation, it was enacted that "a Christian should never marry within the fourth degree of relationship among his own kindred, nor to the widow of one that is so near of kin in worldly affinity, nor one nearly related to the wife whom he formerly had."[2]

It is not necessary to follow up the evidence further, for there is nothing whatever to be found in any way favouring a relaxation of the ancient laws.

[1] Johnson's *Engl. Can.* i. p. 380.
[2] *Id.* p. 485.

As time advances the attitude of the Church and the State towards this question becomes marked and distinct; the latter seems to concern itself only with the civil aspect of marriage, leaving all jurisdiction connected with its spiritual character entirely to the former. The common law treated marriage as a "civil contract," and only interposed to restrain those who were "civilly incapacitated" from entering into it; as, for instance, in cases of insanity, bigamy, or infancy. Here the Courts nullified the contract *ab initio.*

Different attitude of the Church and State in relation to Marriage.

It was regarded as the province of the Ecclesiastical Courts to deal with the higher and Scriptural laws; and the State offered no opposition to the dispensing power which was largely invoked and used from the twelfth century down to the Reformation. Dispensations were the inevitable result of the overstrained restrictions imposed by unwise Canonical legislation, especially in connection with spiritual affinities, but not by any means confined to these.

It was through the exercise of this dispensing power that the final rupture between the English and Roman Churches was brought about in the reign of Henry VIII. The Pope had granted a dispensation to him to marry Catherine, widow of his

The influence of the dispensing power claimed by Rome in bringing about the rejection of Papal Supremacy.

brother Arthur. When, some twenty-five years after, he became enamoured of Anne Boleyn, he raised scruples about the legitimacy of his marriage, and they were intensified by a strong dislike to his wife, which had led to a practical separation. An application to the Pope to nullify the original dispensation was rejected, and Henry determined to shake off his dependence and act for himself. A series of Acts were passed by Parliament[1] at his instigation, all aimed at the Papal Supremacy; and in consequence of a decision obtained from the Universities of Europe against the dispensing power, it was enacted in 1533 A.D. that the marriage with Queen Catherine should be declared null and void as against the laws of Almighty God,[2] and that with his most dear and entirely beloved wife, Queen Anne, be established and taken for perfect for ever thereafter.

The third section of the Act defined the degrees of marriage prohibited by God's laws, including in the table marriage with an aunt, a brother's widow, and a wife's sister, and pronouncing them "plainly

[1] An Act for Submission of the Clergy and Restraint of Appeals to Rome; for withholding the Payment of First-fruits to the Pope: and concerning Peter's Pence and Dispensations.

[2] The Act was entitled "An Act concerning the King's Succession."

prohibited and detested by the laws of God, yet nevertheless at some times proceeded under colour of dispensation by man's power, which of right ought not to be granted"; and the fourth section forbade all such unions, "what pretence soever shall be made to the contrary," confirming all separations from the bonds of such unlawful marriage made by the Church of England, and declared the issue thereof illegitimate; and the fifth enforced separation, where it had not already been effected, provided it be pronounced by the "archbishop, bishops, and ministers of the Church of England, . . . and by none other power or authority."

Another Act[1] was passed in 1540 A.D. which closely affected the law of marriage; it provided that the Court of Rome having claimed dispensing power in regard to cousins marrying, and in other cases[2] "not prohibited by God's law," "no reservation or prohibition, God's law except, shall trouble or impeach any marriage without the Levitical degrees."

Cranmer's view of the marriage laws.

Not long after the passing of this Act Cranmer was appealed to for an interpretation of the expression "God's law," and the definition which he gave

[1] "An Act for Marriages to stand notwithstanding Pre-contracts."

[2] This no doubt refers to those of spiritual affinity.

has been accepted in the Courts ever since. The case in question was the lawfulness of a man's marrying his first wife's niece, of which there was no mention in the Levitical code. The Archbishop declared it illegal, and alleged as his reason "that several persons are prohibited in the law of God which are not expressed, but understood by like prohibition in equal degree: so, it being expressed that the nephew shall not marry his uncle's wife, it is implied that the niece shall not be married to the aunt's husband."[1]

Archbishop Parker's Table of Prohibitions.

In 1563 A.D. Archbishop Parker drew up a Table of Prohibitions, which contained several not named *totidem verbis* in the Levitical code, but capable of being deduced from it *in paritate rationis*, the degree of relationship being precisely the same.

It was adopted by Convocation, and ordered to be set up in churches. Stress has been laid upon the fact that its insertion in the Book of Common Prayer rests on no authority, which is true, it having no place in the "Sealed Book"; but its binding force is not thereby invalidated; it is a law of the Church, as are the Canons of 1603 A.D. which embody it; both are sometimes, for convenience of

[1] Qui loci viris attribuuntur eosdem sciamus fœminis assignari, paribus semper proportionum et propinquitatum gradibus.—*Reformatio Legum*, c. 4.

reference, printed under the same cover with the Forms of Service; but their insertion or exclusion in no way affects their validity, which is wholly independent of the Prayer-Book. At all events, it cannot be denied that all subsequent legal decisions arising out of disputed degrees have been based upon the principles of interpretation laid down by Parker, and found to be in unison with those which had been accepted by the Catholic Church in early days, as in accordance with the law of God.

XI.

The Object and Results of Lord Lyndhurst's Act.

Common errors in the interpretation of this law.

THERE is a very wide-spread but mistaken belief that before 1835 marriage with a deceased wife's sister was legal in England, and that a complete revolution was created in that year by the passing of Lord Lyndhurst's Act. It has been further confidently asserted that the primary object of the promoter of the Bill was defeated mainly by the influence of the Bishops of London and Exeter, who took advantage of the lateness of the session and a reluctance for the prolongation of the debate, to alter its provisions, the result of which was to make marriages "absolutely void, which before were absolutely good." [1]

Lord Campbell, who was no mean authority, testified strongly against such an interpretation, upholding the principle of the Bill, "although," he

[1] Cf. *Marriage with Wives' Sisters*, p. 13 : Lord Grimthorpe.

said, "it was used afterwards to spread a false belief that, till Lord Lyndhurst's Act, a marriage with a deceased wife's sister was perfectly legal; whereas it always was, and I hope ever will be, deemed incestuous, and the only defect to be remedied was the imperfect procedure for declaring its illegality."[1]

In one important particular it introduced a novel principle, creating a distinction in regard to marriages of consanguinity and affinity; but it was professedly based upon rules of temporary expediency, and not intended for future or permanent recognition.

The true rationale of the Act.

As far as we can understand the case, which is more intricate than legal questions usually are, the following may be taken as a fair *résumé* of the history and rationale of the Bill. For three hundred years,[2] marriage, within the prohibited degrees of "God's law," whether those degrees were expressly named or inferentially implied by parity of reason, had been regarded as illegal; but it had been left to the jurisdiction of the Spiritual Courts to declare them void, the Courts of Common and Statute Law, as already stated, taking no notice of marriage, except in its purely civil aspect.

[1] *Lives of Chancellors*, viii. 101.

[2] Cf. Stephen's *Laws of the Clergy*, i. 714; Vaughan, 242, in the case of Hill *v.* Good, where the principle is clearly set forth; Sir H. Jenner, Judgment in Ray *v.* Sherwood.

If a prohibited marriage was impeached and its unlawfulness established, the Ecclesiastical Court pronounced the contract null and void *ab initio*, and the children were *ipso facto* declared illegitimate; but if no prosecution was set on foot, the marriage was treated as valid, or rather was in some of its effects valid, so that the children were entitled to inherit property as though they had been born in lawful wedlock. There was, however, one important proviso: no proceeding might be instituted, except during the joint lives of the contracting parties. The object of this was twofold: First, that which is the aim of all ecclesiastical law and discipline, to provide *pro salute animarum*, not only to punish transgression, but to put a stop to it by correcting the transgressors' lives. There was no possibility of this, if action was taken after death had itself severed the illegal union. Secondly, to save the innocent children from an ever-impending and undetermined fear of being declared illegitimate.

Marriages, then, of this kind were illegal and voidable, but the interposition of the Ecclesiastical Courts must be invoked to give effect to their illegality and pronounce them void. So long as the so-called wife was incapable of claiming alimony or the restitution of conjugal rights, allowed under the

Matrimonial Laws, as she certainly was, it seems idle and wholly misleading to speak of her marriage as perfectly legal or "absolutely good." Indeed, the Act of Henry VIII., referred to above, had not only declared the marriage unlawful, but had enacted that "every such person so unlawfully married shall be separate."[1] The only thing wanting was some compulsory power to set the law in motion for the declaration of nullity.

Disadvantages attached to the previous law.

Such being the state of legislation, it is not a matter of surprise that an attempt should be made to remedy its defects. There was an element of uncertainty in it, which was extremely mischievous; many marriages, contracted in violation of law, Ecclesiastical and Civil, were left unchallenged, where no property was at stake, or no one was especially interested in setting them aside, or no one was willing to undertake the invidious course or incur the cost of judicial proceedings; and the moral effect of constantly winking at deliberate offences against the law of the land could not be otherwise than injurious to the common good.

Again, it sometimes happened that the ends of justice were defeated, and persons defrauded of their

[1] "An Act concerning the King's Succession."—25 Henry VIII. c. 22.

Frequency of collusive suits to defeat its purpose.

rights by the institution of "friendly" or "collusive suits," which were suffered to remain indefinitely in abeyance, often till death made them inoperative. No fresh proceedings could be initiated so long as any suit of a similar kind was pending.

Desire to protect the innocent children of illegal unions.

Lord Lyndhurst aimed at remedying the most serious of these defects; but what enlisted his strongest sympathies was the interest of the innocent offspring of such unions; and it was mainly to deliver them from the uncertainty of their position, which hung over them sometimes for years like a sword of Damocles, that he brought in his Bill to settle their state and condition once for all. It runs as follows: "Whereas marriages between persons within the prohibited degrees are voidable only by sentence of the Ecclesiastical Court pronounced during the lifetime of both the parties thereto, and it is unreasonable that the state and condition of the children of marriages between persons within the prohibited degrees of affinity should remain unsettled during so long a period, and it is fitting that all marriages which may hereafter be celebrated between persons within the prohibited degrees of consanguinity or affinity should be *ipso facto* void and not merely voidable: Be it therefore enacted, that all marriages which shall

have been celebrated before the passing of this Act between persons within the prohibited degrees of affinity shall not hereafter be annulled for that cause by any sentence of the Ecclesiastical Court, unless pronounced in a suit which shall be pending at the time of the passing of this Act; provided that nothing hereinafter enacted shall affect marriages between persons being within the prohibited degrees of consanguinity.

"And be it further enacted, that all marriages which shall hereafter be celebrated between persons within the prohibited degrees of consanguinity or affinity shall be absolutely null and void to all intents and purposes whatever."[1]

Mischievous concessions and compromise of principle.

It was a laudable object to make provision for determining the limits of time within which an action might be brought affecting the status of the children; but there were concessions in the Bill fraught with mischief and danger. One of these has been already referred to. Hitherto there had never been any difference recognised in "nearness of kinship" between relations by blood and by marriage; the Bill placed them on a separate footing. It is said that the Bishops assented to this clause through fear of imperilling that which substituted

[1] 5 and 6 William IV. cap. liv.

a compulsory declaration of nullity for the uncertain procedure of the Ecclesiastical Courts. If this be true, it is a matter much to be regretted; like most compromises of principle, it served, perhaps, a temporary purpose, but it drew after it disastrous consequences not realised at the time. The impregnable position of the historic identity, for purposes of marriage, of consanguinity and affinity is weakened; and the advocates for relaxing the laws have not been slow to remind us of it.

Furthermore, the exemption of all unions within the prohibited degrees existing at the passing of the Act from the operation of the Spiritual Courts, gave, at least, an apparently legal approval to what was unquestionably illegal.

It cannot be denied that the Act condoned an offence; but it was distinctly on the ground that the defective machinery of the existing law had helped to encourage it. However much this condonation may be pressed, its importance on the side of relaxation is almost wholly taken away by the emphasis it gave to the utter illegality of all such unions in the future, which were henceforward pronounced in every respect absolutely null and void. It has been declared on very high legal authority that it left their incestuous character untouched,

and that an action in the Ecclesiastical Court lay precisely as before.[1]

The immediate effects of the Act, it is true, were limited to one generation; but, though the legal mind may be able to distinguish between a judicial declaration of the validity of such marriages and the staying of proceedings to make them null and void; yet the common belief that the Act did the former as well as the latter will not easily be dispelled.[2]

[1] Cf. Sherwood *v.* Ray and Harris *v.* Hicks, Phillimore's *Appendix to the Royal Commission*, and Southend, p. 548.

[2] The error has been aggravated by the title of the Bill, "An Act to render certain Marriages valid," but it is acknowledged by all lawyers that the wording of the title or preamble is of no force unless the substance of the Bill supports it. It does not do so in this case. It has been said that no legislative enactment whatever has been so much misrepresented as this. Cf. Bp. Philpotts in a Speech before the Lords, 1851.

XII.

Consequences to be feared from a change of the Laws.

MANY attempts have been made in later years to induce the English Parliament to alter the unbroken tradition of our Ecclesiastical Law on the Prohibited Degrees. There can be little question, if experience may be trusted as a safe guide in regard to the probable consequences of relaxation, that there is every discouragement against any unsettlement of the existing legislation.[1] Prussia and France deserve especial attention. In the former the long-existing prohibition was assailed as far back as the 17th century, under the inspiration of the rationalistic Grotius, who tried to substitute the law of nature for the Law of God as the fittest basis for marriage rules and regulations. Nature, he asserted, knew nothing of any laws of affinity created by marriage,

The result of relaxing the Marriage Laws in other countries.

Prussian Legislation.

[1] The reader is referred to an excellent treatise on the whole subject in German, which might be very profitably translated, by Thiersch, entitled—*Das verbot der Ehe innerhalb der nahen Verwandtschaft.*

and imposed no bar to union save between brother and sister, or blood relations in the direct ascending or descending line. He failed to win the legislators of his country to his opinion, but there is no doubt that his teaching left its mark behind. His principles were eagerly caught up and developed by Voltaire in the following century; and Frederick the Great, who came under the spell of his evil genius, did not hesitate largely to relax the Prussian laws. No one, however, did so much as the eminent German scholar, Michaelis, to overthrow the authority of Scripture on the whole subject. He went so far as to maintain that there is nothing inherently more sinful in incest than in any illicit intercourse; and the Legislature in 1794 so far accepted his revolutionary principles as to limit restrictions to marriage within three kinds of relationship, viz.: blood relations in direct ascent and descent; brothers and sisters; step-parents and parents-in-law. It legalised marriage between uncle and niece, nephew and aunt, brother-in-law and sister-in-law. England may well pause before assimilating her standard of Marriage Law to that of a country, of which it was said by a professor and philosopher, that it was such as "makes a German cover his face with his hands for shame."[1]

[1] *Roy. Commiss. Report*, p. 53.

French Legislation.

In France the general law and practice of Christendom prevailed till 1792, at which revolutionary period many restrictions were removed, but with most disastrous results; indeed the change is said to have let loose such a flood of immorality, that within little more than a year no less than 20,000 divorces were granted. The famous Code Napoleon checked the evils for a time. The debates which preceded its enactment have been preserved, and the evidence of a number of French Jurists upon the operation of the relaxed laws has been collected together. It testifies to a general disapprobation of marriages of affinity, such as between brothers-in-law and sisters-in-law, uncles and nieces, nephews and aunts, but for the most part with a saving clause that the government "for grave reasons may set aside the prohibitions." The grand judge and minister of justice, whose opportunity of testing the effect of the altered laws upon the crime of the country is unquestionable, spoke in terms of the strongest condemnation, asserting that the permission granted by the law of 1792 had brought in its train many domestic troubles, and was "the chief cause of the demands for divorce then before the Courts."[1]

The opinion of French Jurists on the consequences of relaxation.

[1] Evidence of Claude Regnier, afterwards President of the Corps Législatif. Cf. *French Experience of the Law of Marriage in the year* 1803. Published by Didot, 1805.

The forces of licence, however, set in again so strongly that the legislation, in 1832, yielded to the pressure and withdrew many prohibitions, and few persons would be found prepared to maintain that the sanctity of marriage had not suffered in consequence. France is certainly not the country where the purity of family life is considered such as to be worthy of imitation; and we trust our English legislators will hesitate before they accept the condition of French married life as the model by which to shape our nation's laws.

Both in Prussia and France, therefore, where laxer laws have prevailed longest, there is certainly much to lead England to pause before assimilating her code of marriage to them in any particular. If it be objected that marriage with a deceased wife's sister has been sanctioned in our Colonies with no apparent mischief, we may, at least, interpose an objection that the late legislation in Victoria, by which a life-long contract has been reduced to a temporary obligation,[1] terminable in some cases on most indefensible grounds, if not due to the existence of this particular permission, is nevertheless a result

Experience of the English Colonies.

[1] Divorce is allowed on the ground of desertion during three years and upwards, or of habitual drunkenness for the same period, or for imprisonment of varied length, according to circumstances. Cf. the Divorce Act of 1889, sec. *a*, *b*, *c*.

of departing from the stringency of the ancient code. Deviation in one direction sooner or later leads to deviation in another. Even if it could be proved that hitherto the law has not worked ill in the Colonies, that in itself is no sufficient reason for the mother country to adopt the same relaxation. The law in England is based on a perfectly well-defined, intelligible, and consistent principle; it would be a most dangerous thing to sacrifice consistency because men said that in some places, where the sacrifice had been made, no evils had followed.

The danger of interfering with laws that are based on consistent principles for minor considerations.

It rests now on the simple belief that for purposes of marriage consanguinity and affinity are regarded alike; that no man may marry any of his wife's kindred nearer in blood than he may of his own; if we make one exception, the whole fabric is endangered. At present, on grounds of logic and reason, the Marriage Code is unassailable; if one of the prohibitions be withdrawn, it is utterly illogical to say, "thus far but no farther."

"There is no conceivable reason," as the leading secular journal of this country forcibly put it, "why legislation should stop where it would," if this Bill for marriage with a sister-in-law should pass. That its supporters "have any sort of conviction of the public utility of the measure, or have arrived at its

advocacy by any kind of serious reasoning, cannot be maintained in view of the ostentatious contempt for principle of every kind shown in its drafting."[1] Indeed it has been admitted, even by the advocates of change, that there is no logical standpoint at this one exemption from the prohibitory degrees; and though further relaxation might not be pressed for a time, there can be little question that at no very distant date men will plead the illogical position in which the law is left, and ultimately every bar from affinity will be removed. Further, it is not easy to see that we should have any right to resist or complain under the circumstances. So long as the Code is intact and its consistency unbroken, the most strenuous opposition may be reasonably exerted; for surely the very majesty of law calls for it. It is the fairness, the reasonableness, the perfect soundness of legislation which commends it to the national conscience. Once tamper with it, so as to destroy its character in any of these respects, in the interest of one class or section of society, and it is inevitably lowered in the public estimation.

The ultimate abolition of other prohibitions inevitable if one concession be granted.

Another argument against the proposed change is the unnecessary conflict which it would create between the ecclesiastical and the civil authority.

[1] Cf. *The Times* on the Debate in May 1883.

Antagonism between Church and State certain to be created by change in the law.

Any course or action is to be deprecated which would tend to precipitate that severance of Church and State which most thoughtful men would contemplate with regret both from one side and the other. The Canons of 1603 have pronounced the union with a wife's sister "incestuous"; and though it is perfectly true that these Canons are not binding on the laity, they have received the acceptance of the Clergy. It is true, again, that they may contain rules and regulations which from special circumstances are not enforced; but there is no instance of neglect on the part of the Clergy of any canonical provision which comes to them, as this does, indorsed by the sanction of the Universal Church. It is wholly unjust, therefore, to say that they "make a case of tender conscience of this one Canon, whilst they have no scruple about others having equal obligation."[1]

The insufficiency of proposed provisions to relieve the clerical conscience.

In the late debate in the House of Lords,[2] it was pleaded that the consciences of the Clergy had been respected, and that the Bill "left to the Church absolute liberty of thought, of opinion, and of action," because no clergyman "would be compelled to celebrate a marriage of this kind," nor was it

[1] Cf. Exam. of Keble, p. 25.
[2] Cf. Lord Dunraven's Speech, June 16, 1894.

asked "that the national churches should be open to the celebration of such marriages." All, it was urged, that was sought for by its promoters was the performance of the marriage-rite in this particular case before the Civil Registrar, and "the consequent removal by the State of the stamp of infamy from such an union."

No mention, however, was made of another difficulty which would press upon the Church with no less severity than the celebration of the marriage-rite; it is the admission to Holy Communion of those who have contracted the union. In the eyes of the Church such a marriage is incestuous, and no State legislation can alter this character. In her eyes, too, the sin of incest constitutes a man guilty of that "open and notorious evil living" which, by her Rubrical direction, excludes him from admission to her sacraments; but, if he has been married in accordance with the law of the land, he is placed under the ægis of the State's protection, and the State may be invoked to demand in his behalf what the Church denies.

It is possible that cases may arise, as indeed they have arisen in the past, when in the face of imperative necessity the State may claim concessions from the Church with perfect justice; but in the present

instance no such necessity has been demonstrated, and the Church has no alternative but to assert with uncompromising determination her immovable position.

Change to be deprecated on grounds of social expediency.

Finally, the proposed change would create a violent dislocation in, and radically alter the constitution of some of our cherished domestic relationships. As the law now stands, we have a wide circle of consecrated family life, in which near of kin by marriage and blood are enabled to live together with much freedom in the closest ties of affection and love. To contract this circle is to imperil in a very serious degree domestic and social purity. This aspect of the question was illustrated with singular force by one of our bishops, who spoke thus: "What, do I find, is the very fundamental idea, as I may say, of these prohibitions of marriage? It seems to me unmistakable that the purpose and object of them always has been to protect the purity of the family. It is, as a mere matter of fact, quite certain that there is nothing which so surely protects the purity of the domestic circle as the impossibility of marriage within it, that the impossibility of a marriage with a sister by blood is the real bar which, in cases of temptation, protects the family from impurity absolutely without re-

The Bishop of London on the purity of family life.

straint, and that anything which would interfere with the prohibition of the marriage of those who are nearly related by blood, would very seriously affect the purity of the home and the morality of Christian people. And it seems to me further that, in the prohibitions of marriage in their near degrees of affinity, the case is precisely the same. It is intended to throw over the wife's family exactly the same shield as that which is thrown over the man's own family. For precisely as this bars a man from possible wrong as between himself and his own family, so too there should be some bar to prevent all possibility of wrong between him and the members of his wife's family." [1]

If we look separately at the persons likely to be most affected by an alteration of the law, viz., the husband, the wife, the wife's sister, and the children, we shall find that the scale of possible advantages, as set against that of possible evil eventualities, is light indeed. It is perhaps necessary to preface what we would say with a safeguard. We do not insist that the contemplated evils are sure to follow; our estimate of the moral virtue of the people is not so low; but taking human nature as we have

[1] Speech by the Bishop of Exeter (now of London) at the Diocesan Conference, Oct. 25, 1882.

generally found it, we are justified in pronouncing them possible, and under certain conditions also probable.

Disadvantages that would be entailed on the husband by the proposed law.

First, then, the husband will suffer; he will find a new source of temptation opened to him; the natural barrier to wrong feelings and impulses having been removed, no *naturalis horror* will deter him from a crime that is now so rare that it is scarcely even heard of, for it will be reduced to the level of ordinary adultery. To a man uninfluenced by the power of religious principle the legalisation of marriage with his wife's sister cannot do otherwise than tend to mar domestic happiness and create new opportunities for unfaithfulness and sin.

Disadvantages to the wife.

The wife will suffer; losing the safeguard which the law gives her, she may be compelled to forego the pleasure of her sister's companionship, and in times of sickness and failing health, of her assistance in household duties. She will know that there is at least a possibility that her husband's affections may be alienated by the attractions of one, who is perhaps younger and stronger and more able to enter into his pursuits than herself. It cannot be denied that a change in the law would create at least a risk of strained relationships, and under certain circumstances even of distressing jealousy.

The wife's sister will suffer; for the protection which the law now provides will be withdrawn. Circumstances frequently arise when, through the death of parents or straitened fortunes, she is compelled to seek a home beneath her married sister's roof, and she generally finds a ready welcome as one of the family on terms of the fullest intimacy and affection. Again, if the latter die, she is regarded as the natural person to be called in at once to take care of the children; but, if the law be changed, in the former case a sense of propriety and a natural delicacy of feeling would enforce her departure, or in the latter make it impossible for her to supply her sister's place. Common sense teaches that a woman cannot occupy the position of a man's sister in his house, and be at the same time to him legally a marriageable person. Only in the rare instance when a widower might wish to make her his wife, and she was able to reciprocate the desire, could her position as sister-in-law do otherwise than suffer.

Disadvantages to the sister-in-law.

Then, lastly, the children's lot could scarcely be improved. Should they be deprived of a mother's care and love, they find now a natural protector in the unmarried aunt; but let the impediment to her marriage with their father be removed, and she could only exercise the office at the risk of becoming

Disadvantages to the children.

the subject of unkindly insinuation and suspicion. At the very moment when the children most need the care and affection which such a near relation is able and ready to give, they must be handed over to the ministrations of a paid attendant.

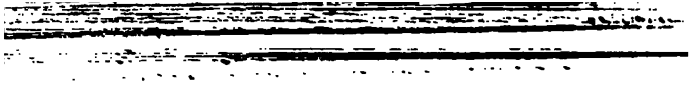
Furthermore, if there be any truth in the proverbial description which characterises the stepmother as unjust, it is hard to see how it will be avoided if the children's aunt assumes this relationship. The causes which are said to prompt the injustice, viz., a natural preference for children of her own, or disappointment if none such are born to her, will hardly be neutralised. They may possibly be weakened; they cannot be destroyed. It was true wisdom, then, when the famous archbishop fifteen centuries ago put forth his stirring appeal,[1] on hearing that a proposal had been made to legalise such a marriage: "Be careful, O man, not to make their aunt a stepmother to thy children; and do not arm her who by duty already stands to them in the relation of a mother, with the envy of a stepmother."

With this we draw our arguments to a close. We have endeavoured to look at the whole question of our Marriage Code with its prohibited degrees in

[1] S. Basil's *Ep. ad Diodorum; Epist. Class.* ii. Ep. clx.

divers aspects, and in one and all it appears to be based on the soundest principles, in strict accordance with the general teaching of Holy Scripture, supported by the consent of the Universal Church, and best calculated to uphold the purity of family life. Nothing that we have ever heard in favour of withdrawing its imposed restrictions can have even a feather's weight against such considerations. However much the conditions of life in this country may change in coming years, it is a thing to be constantly prayed for, that herein at least England will be true to her history through all the Christian centuries, and continue as hitherto to "stand in the way and ask for the old paths."

Summary of the grounds for resisting change.



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